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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON, APPELLANT,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY CRIMINAL COURT OF DALLAS COUNTY, STATE OF TEXAS

FILED DECEMBER 1, 1942.

SUPREME COURT OF THE UNITED STATES

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—4139

[fols.1-2] [Caption omitted]

IN THE CORPORATION COURT, CITY OF DALLAS, TEXAS

COMPLAINT—Filed September 16, 1942

In The Name And By The Authority Of The State Of Texas:

Personally appeared before me, the undersigned authority, this affiant, who after being by me duly sworn, deposes and says he has good reason to believe, and does believe, that, Mrs. Ella Jamison, hereinafter called defendant, on or about the 15th day of Sept. A. D. 1942, and before the making and filing of this complaint, in the City of Dallas, in Dallas County and State aforesaid, did then and there unlawfully, within the city limits of the City of Dallas, Texas, carry, hold by hand, distribute, scatter and throw handbills as an advertising medium, in violation of and contrary to Art. 140-7 of Ord. 3251 of the Ordinances of the City of Dallas, Texas, upon the side walks of South Mont Clair Street, the same being public sidewalks a long a public street within the corporate limits of said city.

[fol. 3] Against the peace and dignity of the State.

(Signed) George Lintner, Affiant.

Subscribed and sworn to before me by affiant, a credible person, on the 16th day of Sept. A. D. 1942.

(Signed) Lydia Powell, L. S. Notary Public in and for Dallas County, Texas.

[File endorsement omitted.]

IN THE CORPORATION COURT OF THE CITY OF DALLAS

No. 83918

STATE OF TEXAS

vs.

MRS. ELLA JAMISON

MOTION TO QUASH COMPLAINT—Filed September 25, 1942

To The Honorable Judge Of Said Court:

Now comes Mrs. Ella Jamison, defendant in the above entitled and called case and moves the Court to quash the

complaint filed herein against defendant for the following reasons, to wit:

1. That said complaint is void because the ordinance upon which said complaint is based is in conflict with and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in the following particulars; that the same violates defendant's constitutional rights to free press, free speech, and the right to worship Almighty God according to the dictates of his conscience.

2. That said complaint is void because the ordinance upon which said complaint is based is void as construed and applied in that it deprives defendant of his constitutional right of free speech, free press and freedom to worship [fols. 4-5] Almighty God as is by Him commanded in His written Word and according to plaintiff's conscience, all contrary to the United States Constitution, Fourteenth Amendment, Section 1.

(Signed) Tom S. Williams, Attorney for Defendant,
Sterling Building, Sulphur Springs, Texas.

[File endorsement omitted.]

[fol. 6] In Corporation Court of the City of Dallas

[Title omitted]

Judgment—October 15, 1942

Be it remembered that on this the 15th day of October, 1942, came on to be heard the above styled and numbered cause, said defendant appearing in person and by attorney, both parties announced ready for trial and thereupon the complaint in said cause, filed on the 16th day of September, [fol. 7] 1942, charging the defendant with the offense of Distributing Handbills in vio. of Art. 140-7 of Ord. 3251, etc. was read to the defendant, and thereupon defendant entered a plea of not guilty to the allegations contained in said complaint; the court having heard the testimony of all witnesses it is considered and adjudged by the Court that defendant is guilty of the offense charged in said complaint and assesses her punishment therefor at a fine of $5.00.

It is therefore ordered, adjudged and decreed by the Court that the State of Texas, for the use and benefit of the

City of Dallas, do have and recover of and from the said defendant the sum of $5.00 fine and all costs in this prosecution incurred, for which execution will issue and the said defendant, is ordered remanded to the custody of the Chief of Police of the City of Dallas to be held in the City Jail of the City of Dallas until the fine assessed against said defendant and all costs incurred in this prosecution are fully paid and satisfied.

Judgment entered as of the 15th day of October, 1942.

Clerk's certificate to foregoing papers omitted in printing.

[fol. 8] [File endorsement omitted]

IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

No. 2922

STATE OF TEXAS

vs.

MRS. ELLA JAMISON

MOTION TO QUASH COMPLAINT—Filed November 4, 1942

Now comes the defendant in the above entitled and numbered cause and moves the Court to quash the complaint as amended and discharge the defendant for the following reasons:

1

The ordinance under which the complaint is drawn and filed against this defendant is void on its face because it is in excess of the police power of the State of Texas or the City of Dallas and the means employed have no reasonable relation to the police powers of the city or the ends aimed at by the ordinance therefore it is unreasonable and deprives defendant of her propefty and liberty without due process [fol. 9] of law and equal protection of the law, all contrary to the Constitution of the State of Texas and the Fourteenth Amendment to the United States Constitution.

2

The ordinance is void on its face because by its terms, it expressly abridges the people's inherent and unalienable

rights of freedom of communication, of assembly, the use of the public sidewalks and streets, freedom of speech and of press, all contrary to the constitution of the state of Texas and the First and Fourteenth Amendments to the Constitution of the United States.

3

That from the facts alleged in the complaint, the ordinance has been construed in such a manner as to abridge the use of the public streets for a lawful purpose, freedom of communication, of assembly, freedoms of speech and of the press, all contrary to the Constitution of the State of Texas and the First and Fourteenth Amendments to the United States Constitution.

4

The ordinance is vague, indefinite and too general and constitutes a drag-net so as to allow the deprivation of liberty and property without due process of law contrary to the constitution of the state of Texas and section 1 of the Fourteenth Amendment to the United States Constitution.

Wherefore, defendant prays that this Court render and enter an order quashing the complaint and ordering the defendant discharged together with her costs.

(Signed) Tom S. Williams, Stirling Building, Sulphur Springs, Texas. (Signed) Hayden C. Cov-
[fol. 10] ington, 117 Adams Street, Brooklyn, New York, Attorneys for Defendant.

[File endorsement omitted]

IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

[Title omitted]

ORDER OVERRULING MOTION TO QUASH—November 4, 1942

On this the 4th day of November, 1942, at a regular term of this court in the above entitled and numbered cause came on to be heard and considered the defendant's motion to quash the complaint, as amended, duly and timely filed and presented to the Court, and the Court, after hearing

argument of counsel thereon, is of the opinion that the same should be overruled; therefore,

It is hereby Ordered, Adjudged and Decreed by the Court that said motion to quash be and the same is hereby in all things overruled, to which action of the court the defendant excepted in the time and form required by law.

Done at Dallas, Dallas County, Texas, on November 4, 1942.

(Signed) Winter King.

[fol. 11] IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

[Title omitted]

MOTION FOR A FINDING OF NOT GUILTY AND FOR JUDGMENT—
Filed November 4, 1942

Now comes the defendant in the above entitled and numbered cause and moves the court to find the defendant not guilty and for a judgment of acquittal and ordering the complaint dismissed and discharging the defendant at the close of all the evidence, for the following reasons:

1

The ordinance under which the complaint is drawn and filed against this defendant is void on its face because it is in excess of the police power of the State of Texas or the City of Dallas and the means employed have no reasonable relation to the police powers of the city or state nor do the ends aimed at by the ordinance justify the means employed by the ordinance, therefore it is unreasonable and deprives defendant of her property and liberty without due process of law and equal protection of the law, all contrary to the Constitution of the State of Texas and the Fourteenth Amendment to the United States Constitution.

2

The ordinance is void on its face because by its terms it expressly abridges the people's inherent and unalienable rights of freedom of communication, of assembly, the use of the public sidewalks and streets, freedom of speech and of press, all contrary to the consfitution of the state of Texas and the First and Fourteenth Amendments to the Constitution of the United States.

[fol. 12] 3

That from all the facts and circumstances established in the evidence it appears that if the ordinance in question is construed and applied to cover the activity of the defendant that said defendant's rights of freedoms of assembly, speech, press, the rights to use the streets and sidewalks for a lawful purpose, and also abridges the defendants right of freedom to worship Almighty God Jehovah by serving as His ordained minister preaching the Gospel of God's Kingdom, all of which rights are denied contrary to the Texas Constitution and the First and Fourteenth Amendments to the United States Constitution.

Wherefore, at the close of all the evidence, the defendant moves the court to find the defendant not guilty for the above reasons and render and enter a judgment of acquittal discharging the defendant together with her costs.

(Signed) Tom. S. Williams, Sterling Building, Sulpher Springs, Texas. (Signed) Hayden C. Covington, 117 Adams Street, Brooklyn, New York. Attorneys for Defendant.

[File endorsement omitted.]

[fol. 13] In the County Criminal Court of Dallas County

[Title omitted]

Order Overruling Motion for Judgment—November 4, 1942

On this the 4th day of November, 1942, at a regular term of this court in the above entitled and numbered cause came on to be heard and considered the defendant's motion for a judgment of acquittal and finding of not guilty, duly filed and presented to the court at the close of all the evidence and when both parties announced that they closed their case, and the court, after hearing argument of counsel thereon, is of the opinion that the same should be overruled; therefore,

It is Ordered, Adjudged and Decreed by the Court that said motion for judgment of acquittal and finding of not guilty be and the same is hereby in all things overruled to

which action and ruling of the court the defendant excepted in the time and form required by law.

Done at Dallas, Dallas County, Texas, on November 4, 1942.

(Signed) Winter King, Judge, County Criminal Court of Dallas County, Texas.

[fol. 14] IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

[Title omitted]

JUDGMENT—November 4, 1942

On this day came on to be heard the above entitled and numbered cause and came the State of Texas by her attorney, Walker K. Wilson, assistant Criminal District Attorney and the defendant in person and by her attorneys, and both sides announced ready for trial. It appearing that this is an appeal from the Corporation Court of the City of Dallas and that this court has jurisdiction of the appeal and the subject matter of this case. Whereupon by agreement of the parties made in open court leave of the court was granted to the State of Texas to amend the complaint and thereupon the complaint was amended. Thereupon the defendant waived a jury and pleaded not guilty.

The Court having heard the complaint read, the defendant's plea of not guilty thereto; the evidence and argument of counsel, is of the opinion that the defendant is Guilty, as charged in the complaint, and assesses her punishment at a fine of $5.00 and all costs incurred in this case.

It is therefore Ordered, Adjudged and Decreed by the Court that the defendant, Ella Jamison, be remanded to the Custody of the Sheriff of Dallas County, Texas; and that she remain there until all of said costs of court have been paid; and her fine of $5.00 has been paid, to which defendant excepts.

Done at Dallas, Dallas County, Texas, on this the 4th day of November, A. D. 1942.

[fol.15] (Signed) Winter King, Judge of the County Criminal Court of Dallas County, Texas.

[fol. 15a] IN THE COUNTY CRIMINAL COURT DALLAS COUNTY

[Title omitted]

AGREED STATEMENT OF FACTS

Be It Remembered that on this the 4th day of November, A. D. 1942, the above entitled and numbered cause came on for trial before the Honorable Winter King, Judge of the County Criminal Court of Dallas County, Texas, at which time an Agreed Statement of Facts was entered into by Counsel for the State and Counsel for the Defendant, as follows:

[fol. 15b] Counsel for Defense hereby agrees that Article 140-7 of Ordinance 3251 of the Ordinances of the City of Dallas, Texas, was duly and legally passed by the City Council of the City of Dallas, Texas, and the same was in force and effect on the 15th day of September, 1942, and that Counsel for Defense raises no objection to the validity of the Ordinance insofar as it pertains to the legality of the passage of said Ordinance.

Counsel for the Defense further hereby agrees that the alleged offense took place within the corporate limits of the City of Dallas, Texas, as charged in the complaint in the following particulars: That the defendant was upon a public street, charged in said complaint, and was distributing to pedestrians upon the street hand bills entitled "Peace, can it last?", which handbill is hereby incorporated in said stipulation and marked as Defendant's Exhibit No. 1. (Said Exhibit so Marked by the Reporter as Defendant's Exhibit No. 1, and herein copied as follows:)

DEFENDANT'S EXHIBIT NO. 1

"Will Postwar Conditions bring a New World? It is vital to know now. Hear Peace, Can it Last? By N. H. Knorr, addressing the Nation-wide Assembly of Jehovah's [fol. 15c] witnesses Simultaneously in more than 50 cities. Key assembly, Cleveland, Ohio. Sunday, September 20, 3:00 P. M., Vickery Park, Highway 75, Greenville Avenue. Dallas, Texas. All forward-looking persons of good-will are invited. Admission free. No collection. This is your invitation to attend the Nation-wide Assembly of Jehovah's witnesses, particularly the public address, Peace, Can it Last? By N. H. Knorr, President of the Watch Tower So-

ciety as announced overleaf. Also you will receive the uplifting hope of life in eternal youth in a new world, by reading Children, 384 pages, illustrated with unusual colored pictures, and bound in sky-blue cloth, stamped with gold and embossed; and Hope, 64 pages, showing the hope for the dead and for the survivors in a righteous world. *Both Watchtower publications mailed to you postage prepaid on your contribution of 25¢. Send to Watchtower, 117 Adams St., Brooklyn, N. Y.*"

And that such activities constitute a violation of said Ordinance of said City.

That the Defendant is one of Jehovah's witnesses and associated with the Oak Cliff-Dallas Company or Organization of Jehovah's Witnesses, that has been located in the City of Dallas for more than forty (40) years. That Jehovah's witnesses are a Christian Organization and preach the gospel by means of distribution, pamphlet and leaflets on the public streets and from house to house, and also by the holding of conventions and assemblies throughout the United States. That prior to September 15, 1942, [fol. 15d] the Dallas Company of Jehovah's witnesses made arrangements with the Watchtower Bible and Tract Society of Brooklyn, New York, a charitable, public corporation, used by Jehovah's witnesses to print and publish literature used, with which they preach the gospel, to join in a nation-wide assembly and convention to be held by Jehovah's witnesses in fifty-two (52) cities of the United States that would be tied in by telephone wires with the key city, Cleveland, Ohio.

That pursuant to such arrangement, the Dallas Company of Jehovah's witnesses, of which the defendant is a part, arranged to hold their assembly at Vickery Park, Highway 75, on Greenville Avenue, the City of Dallas.

Pursuant to such arrangements, plans were made to advertise the holding of said assembly and convention by means of distribution of placards, signs and handbills or leaflets, also the writing of letters of personal invitation. That one of the means employed by said Company of Jehovah's witnesses was to publicly distribute upon the public streets and sidewalks of the City of Dallas the leaflet marked Defendant's Exhibit No. 1. *The defendant would by walking along the sidewalks and handing the same to the pedestrians whom she met. She did this in an orderly and quiet manner, and without being offensive to anyone. She*

did not herself scatter or throw any of the leaflets upon the sidewalks, but handed them only to the pedestrians whom she met.

In the performance of this activity, the defendant acted as a duly ordained minister of Jehovah God, and as a duly [fol. 15e] qualified and acting representative and agent of the Watchtower Bible and Tract Society, and she possessed credentials attesting to such authorization and authority of such charitable publishing house. The following credentials marked Defendant's Exhibit No. 2.

(Said Exhibit so marked by the Reporter as Defendant's Exhibit No. 2, and herein copied as follows:)

DEFENDANT'S EXHIBIT No. 2

Front side—"Why is it that God permits "Christendom" to be distressed with war and attacks by the pagans, and with great sorrow and suffering to the people? What good purpose will this serve? There is an answer which will satisfy all honest persons. It is God's own answer from His Sacred Word. To know it will bring you great relief, comfort and good hope. Those whom Jehovah God sends forth as his witnesses are commissioned to bring His answer and message to all seeking the truth. In the face of hard times they are still able to offer this needed information in books, periodicals and recorded talks. The one presenting this can explain such provision, and it will be for your good and you are under no obligation to contribute any money. "The wise will hear."

Reverse side—"To Whom It May Concern: This is to certify that Ella Jamison whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's Kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watch Tower Bible and Tract Society, created and organized and chartered by law to preach the gospel of God's Kingdom, sends [fol. 15f] forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are ordained and commissioned by God, and the signer of this card scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10: 7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9: 16. Being one of Jehovah's witnesses, the signer must obey God rather than men. (Acts 3: 23; Acts 4: 19; Acts 5: 29) Jehovah's witnesses in obedience to God's

commandments, preach the gospel and worship Almighty God by calling upon people at their homes, exhibiting to them the message of the gospel of said gospel of said Kingdom in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this world for a witness, giving other people the opportunity of learning of God's gracious provision for them. Said witness of Jehovah is doing this work of his ow- volit n and is bearing the testimony before the people in accordance with the provisions of the fundamental laws of this land and in obedience to God's commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25: 31-46) The Society or its appointed representatives will be pleased to furnish authoritative proof as to whether the signer of this card is one of Jehovah's witnesses.

[fol. 15g] Watch Tower Bible & Tract Society, By N. H. Knorr, President.

Name Mrs. Ella Jamison
Address 1447 Claude St.
Dallas, Texas

That the defendant is a widow, aged 68, formerly a school teacher, that prior to 1906, she attended the Watch Tower Bible School, and received training in a Bible course of study, conducted for the purpose of preparing Jehovah's witnesses for the ministry. That she attended such school from 1906 to 1909, and that in the year 1909, she was duly ordained by an Elder of the Dallas Company of Jehovah's witnesses, which as a result of the consecration made, which was symbolized by water baptism, and which consecration and ordination, the defendant verily believes that she was required by commandments recorded in the Bible, to preach the Gospel, publicly, and from house to house, and upon the streets, as did the Lord Jesus Christ, and the Apostles as recorded in Acts 20: 20; 1 Peter, 2: 21, and other scriptures.

That instead of preaching orally, the defendant employs the printed page which contains regular sermons upon the

Bible, published by the Watch Tower Bible and Tract Society.

That the defendant engages in this work because, as [fol. 15h] above stated, she believes that it is her duty to do so, and that if she fails to thus preach the Gospel in this manner, she would be everlastingly destroyed as recorded in Ezekial 3: 18 and 19, Chapter 33: 8,9.

That the book "Children" which is described on the other side of this leaflet, and which the recipient of this leaflet was invited to obtain on the contribution of 25 cents, was distributed by the defendant in the event that any pedestrian whom she met inquired as to how he might obtain this book described on the leaflet. The book, "Children" and the booklet "Hope" are offered in evidence as Defendant's Exhibit No. 3 and 3a.

(Said book and booklet so marked Defendant's Exhibit No. 3 and 3a may be found in this statement of facts at Page —.)

If the party thus contacted and who inquired as to how this book could be obtained, contributed the 25 cents for the book, the defendant gave the booklet "Hope" as a premium and free of charge. That after one obtained the book and booklet in that fashion, the defendant mailed to the one thus receiving the book, a series of three study courses, enabling the one who obtained the book to properly study the same along with the Bible.

That the blue book "Children" cost the defendant 21 cents. That the booklet "Hope" cost the defendant one cent, and the cost of mailing the three study courses was four and a half cents postage. That this deficit between the amount contributed, and the amount expended, is taken [fol. 15i] care of by the defendant individually, because she desires to contribute her time and services, and a portion of her money toward the preaching of the Gospel, in order that people might obtain this vitally important message concerning her views of the Bible.

That the overall description of this literature is that it contains a series of discourses on the Bible, which shows that the Bible plainly proves that at this time there is substantial evidence coming to pass such as the totalitarian government overrunning the earth in wickedness and destruction, for the purpose of destroying all liberal governments as a part of a conspiracy to destroy the people's liberties, and that such circumstances plainly shows that the

people are now living in the time of the end when Almighty God will set up His Kingdom or the Theocracy foretold in Daniel 2: 44; Revelation 21: 1-5; and Matthew 24: 14.

That while the defendant did not actually distribute any of the books "Children" upon the street, this was because no one inquired of her concerning how they might obtain the book, but had they inquired, she would have distributed the books to them in the manner above indicated.

That this assembly which is advertised on this leaflet was a meeting of Jehovah's witnesses in the City of Dallas; also, the general public of the City of Dallas was invited to attend this assembly, where such general public who attended and also Jehovah's witnesses in attendance could [fol. 15j] receive and hear Bible discourses by speakers from the platform at Vickery Park and also, by telephone wire communications from Cleveland, Ohio. That the speech entitled and designated "Peace, Can It Last?" delivered by N. H. Knorr, President of the Watch Tower Society, actually was delivered at Vickery Park by means of telephone wire communications from Cleveland, Ohio, to those assembled.

That such speech, "Peace, Can It Last?" was also printed and a copy thereof was distributed free of charge to every person in attendance at such assembly. The printed transcription of that speech thus delivered, entitled "Peace, Can It Last?" is offered in evidence as Defendant's Exhibit No. 4.

(Said exhibit received in evidence and marked as Defendant's Exhibit No. 4, and same may be found at side Page 15-L of this statement of facts.)

There is now offered in evidence the Ordinance of the City of Dallas under which the complaint is drawn and filed, and the defendant prosecuted here, as Defendant's Exhibit No. 5.

DEFENDANT'S EXHIBIT NO. 5

Art. 140-7. Scattering handbills, etc.—It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement; or to wear any costume for the purpose of attracting attention [fol. 15k] of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of

the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars.

STATE OF TEXAS,
County of Dallas, City of Dallas.

I, Earl Goforth, City Secretary of the City of Dallas, Texas, do hereby certify that the above and foregoing is a true and correct copy of Art. 140-7 of the Code of Civil and Criminal Ordinances of the City of Dallas adopted by Ordinance No. 3251 passed by the City Council of the City of Dallas July 30, 1941 and correctly enrolled in ordinance book No. 31, page 634 of the ordinance records of the City of Dallas:

Witness my hand and the seal of the City of Dallas, this the 30th day of October, A. D. 1942.

(Signed) Earl Goforth, City Secretary of the City of Dallas, Texas. (Seal.)

[fol. 15] The defendant was requested to discontinue the distribution of these folders by the police officer arresting, and she refused to discontinue this distribution and stated to the officer that she was commanded to thus preach the Gospel, and she acted as did the Apostles in this regard, and after that, stated she would obey God rather than man, as recorded in Acts, 5: 25 and 4: 18, and that because she refused to discontinue the distribution of this leaflet when thus requested, the officer took her into custody and arrested her, and she was thus prosecuted.

It is hereby agreed between Counsel for the State of Texas, and Counsel for the Defendant, that the foregoing 12 pages of testimony constitutes a full and complete agreed Statement of Facts in this Cause.

W. K. Wilson, Counsel for the State. Tom S. Williams, Hayden C. Covington, Counsel for Defendant.

The foregoing pages of testimony examined, approved and ordered filed as the agreed Statement of Facts in this Cause.

Winter King, Judge of the County Criminal Court. Dallas County, Texas.

DEFENDANT'S EXHIBIT No. 4

[fol. 151-1] Peace—Can it Last?

When the "four horsemen" began their ride through the world in 1914, the nations and peoples painfully felt the steelshod hoofs of the fire-red horse. Its mad gallop was foretold in the Apocalypse in these words: "And there went out another horse that was red: and power was given to him that sat thereon to take peace from the earth, and that they should kill one another: and there was given unto him a great sword." (Revelation 6:4) That ride, bringing the bloody World War, seemed to come to an end in 1918, and the sword was sheathed in peace. A permanent peace it was hoped it would be. Now it can be seen that the peace was only a truce, a prolonged armistice. The fiery horse again charges furiously through the earth, and peace is taken away by a total war which dwarfs the World War in magnitude and destructiveness. The fond dreams of lasting peace have been shattered with a rude awakening. Why?

Men of affairs speak of this as a war for world domination. It is a violent clash between the parties to two sets of ideas, which ideas cannot for ever operate side by side on this earth. They are irreconcilable, and hence create a divided house of humankind. In view of what is coming [fol. 151-2] upon the world, it does no one any good to hide from ourselves the truth with the thought that by smothering the truth the way can be laid for getting together in peace. The great cry of the nations fighting totalitarian aggression is for FREEDOM. Said the great "Prince of Peace": "The truth shall make you free." Let us for freedom's sake not fear to face the truth. The candid truth then, is, that religion is at the root of the world's trouble. That fact stands out clearly to all who desire to see the truth and to order their course aright. Not only freedom, but life, is involved.

Careful students of history agree that since the so-called "Reformation movement" of four centuries ago the condition was set up and has existed that must at last break forth in an all-out war for world domination. As a result of that Reformation the religious organization in England, up till then bound to papal Rome, was nationalized and Britain became a nation religiously independent of the Vatican. Then followed the setting up and spread of the

British Empire to the ends of the earth. It has been a Protestant empire, and against it the Catholic empires of Spain and France have enviously dashed in vain. Added to that, in 1776 the American nation was born, a revolutionary democracy establishing a separation of religion and state, and hence it was a non-Catholic republic. Its ties with the British Empire have been natural, and, in spite of some disagreements, those ties have grown stronger [fol. 151-3] with time and world developments. Thus the civilization that the earth has known for the past three hundred years has been held together and dominated by two Protestant and non-Catholic world powers of democratic ideals. For this reason democracy has been associated with Protestantism and the clergy have stirred up great prejudice against it in Catholic lands.

Down till the Reformation the Catholic civilization alone dominated, which method of life and rule was marked by absolute, autocratic governments backed and blessed by the clergy of a totalitarian Hierarchy. That totalitarian religious system demanded unquestioning obedience and submission to the will of the Hierarchy, and it allowed for no democracy and freedom of worship according to the written Word of God. This explains the action of the Vatican's head in 1849 when he called in the armies of the French to overturn the republic which freedom-loving Italians set up in Rome that year. It explains the undercover dealings of the Vatican through its nuncio to Germany, now pope, whereby the Nazi chieftain, a baptized Catholic, was maneuvered into power as dictator in Germany and a concordat with the Vatican was made and the German Republic was destroyed. It explains also why the Vatican and its Hierarchy in Spain and in America approved the rising up of a rebel to overthrow the Spanish Republic with the aid of the Nazii and Fascist dictators having concordat relations with Vatican City. It explains further why, after the [fol. 151-4] Japanese began their assault, in 1937, for the conquest of the Chinese Republic, the Vatican sent out instructions to its missionaries in China to persuade the Chinese to submit to Japanese control. It explains why the French Republic was sold out, in 1940, and a devout member of the religious organization was made chief of state, abolishing "Brotherhood, Equality and Liberty" and erecting a Fascist state.

Moreover, it explains why religious influence was back of the Civil War of 1861 and the Vatican made overtures with the head of the Confederacy, reaching a shocking climax in the assassination of Abraham Lincoln, who belonged to no religious organization but stood solidly by the Holy Bible. It explains, finally, the reason for the outbreak of religious intolerance in America in 1940, Hitler's great year, and the mob violence incited by the said religionists against Jehovah's witnesses, who believe in the righteous principles of this Republic's Constitution and who expose the schemes and efforts of the religious-totalitarian combine for world domination.

It is vital to the carrying on of democracy, therefore, for the rulers of the nations to have in mind the foregoing truths when they listen to the words of an outstanding archbishop of America who speaks for Vatican City. Speaking at Columbus, Ohio, in February, 1942, on the subject "How Can Peace Come to the World?" this Hierarchy [fol. 151-5] spokesman said: "The enemy most feared by the dictators of nations and by all totalitarian governments is the Catholic Church. The democracies of the world have no reason to fear the church. History gives them no justification for suspicion • • • With the prophetic Pope Leo XIII let us say: 'Christ our Lord must be reinstated as the ruler of human society.'" (Cincinnati *Times-Star*, February 24, 1942) The sacred Scriptures and the facts of history prove that Christ Jesus has never yet been the "ruler of human society". Therefore the proposed 'reinstatement' means really the restoration of world domination of the religious head at Vatican City who claims to be the "vicegerent of Christ". The unchanging policy and purpose of that most powerful religious organization, the very heart of it, is, WORLD DOMINATION by it as being necessary to world salvation, because it claims itself to be the visible representative of Christ's kingdom. The violent, un-Christian means used by that religious organization to gain its position of world domination have never let this earth enjoy an enduring peace.

The inspired phophecy of Daniel, chapter eleven, foretold this present conflict as a war between the totalitarian "king of the north" and the democratic "king of the south". It points out the totalitarian world power as the aggressor in the grab for world control in the "time of the end". Since 1914 the world has been in its "time of the end", with

the FINAL END yet ahead. Exactly how long the raging total [fol. 151-6] war would continue the Scriptures do not seem to show. By some religionists this war has been named "Armageddon". Others, observing the theater of the battle getting near to Megiddo in Palestine, ask: "Are we facing Armageddon?" The Scriptures are plain that the final battle of Armageddon is one far more stupendous that a fight between "the king of the north" and "the king of the south"; it is a universal war, a fight between worlds. In it the entire present evil world will be destroyed and the new world of righteousness which Almighty God establishes by Christ Jesus will bring peace, prosperity and life to this war-racked earth. Hence this international war is not the "battle of that great day of God Almighty".—Revelation 16: 14-16.

Before Armageddon comes, the Scriptures show, a peace must come. Hence it is proper that the problems of such peace be now considered. War problems at present engross the nations, and no true Christian will get in the way of those concerned therewith. But the war precedes a peace; and in a radio address at Philadelphia, broadcast around the world, concerning postwar leadership, the attorney general of the United Sates said (July 3, 1942): "It seems to me a wholesome thing that men are thinking in 1942 of ways to win a peace, and acting on their thoughts —yes, even now, while the war is yet to be won. It means that at last the realization has come to us that world war and world peace cannot be dissociated as parts of the same [fol. 151-7] great upheaval. The problems of peace and of war are interdependent." (New York *Times*, July 4, 1942) Shortly thereafter the ex-president of the nation said in a broadcast from San Francisco: "Whatever the modifying views of our associates in war may be, Americans should have formulated the kind of peace that THEY want. They must make up their minds BEFORE the war ends; otherwise others will make the peace, and not us." (New York *Times*, July 13, 1942) And in his recent book, on "The Problems of Lasting Peace", it is written: "The purpose of this war, the most terrible of three centuries, is to make a lasting Peace. We must first win the war. But we will not win lasting peace unless we prepare for it. And we can prepare only by full and free public discussion, by the cold surgery of analysis." In May it was revealed that thirty-five government agencies were then engaged in post-

war planning. (Stated by T. E. D., May 9, 1942) International discussions, and likewise public forums, are being held on postwar problems.

Therefore the question is a timely and urgent one, "Peace —Can It Last?" The answer depends upon how the peace problems are solved. The greatest religious head in "Christendom" claims it his right to hold the world domination, and he is moving to exercise his power and influence in the peace conference, even offering the Vatican in which to hold it. By reason of his concordat with the Fascist dictator [fol. 151-8] of Rome in 1929 he is now a temporal ruler as well as a religious one. The Hierarchy and the religious population which he rules as god declare that the Peace Treaty of 1919 failed because the pope was not in on it. He now appears in a peace role, pluming himself for a suitable place or voice in the coming Peace Conference. If he gains it, and if the Treaty of Vienna of 1815 is followed as to primacy of diplomatic representatives, then he or his official representative should preside as the "dean" of all the conferees. Says one of his American archbishops: "The only enduring peace that will restore the world to sanity and to a sense of the dignity of human personality is the peace of Pope Pius XII." And a monsignor in a radiocast from Washington, D. C., says: "He [that is, Pacelli] whose name is rooted in peace will be the one who will restore peace to the world; for when peace does come it will come, not in the way the world expects or plans it, but in an utterly unsuspected way."—Mgr. F. J. S., February 8, 1942.

A United Press dispatch of July 15, from Vichy, France, was therefore of peculiar interest to Americans who believe only in peace by victory, and no negotiated peace with a gangster, and which dispatch reads: "Diplomatic circles said tonight that the Vatican was preparing a peace encyclical, to be published in mid-August, defining Pope Pius XII's ideas of a basis for a negotiated peace and postwar world planning." An earlier United Press dispatch from [fol. 151-9] Vichy, which apparently had some bearing on this report, was completely censored out except for the statement that 'there was a noticeable rapprochement of the Vatican and non-Catholic powers' recently.'" (New York *Times*, July 16, 1942) Whom these "non-Catholic powers" include can be surmised, when this fact is remembered, that despite the break between Italy and the United States

the secretary of the personal envoy of the president is meantime acting as the representative of this country to the Vatican.

The political statesmen of the world are also looking ahead to the peace, anxiously. Some fear the peace worse than they do the war, fearing for a great postwar slump, unemployment, dislocation of industry, communications' breakdown, international debt tangle, anarchy and revolutions in various places, famine and pestilence, and other evils. They hope that the mistakes and blunders of 1919 and following years will not be repeated. A great struggle is foreseen to "lift the living standards from one end of this planet to the other". The Nazi dictator has led his hordes on in world aggression with the promise of, to quote him, "a social state which must and shall be a model of perfection in every sphere of life"; and the pope has published to the world a five-point program for world peace.

Those of a democratic mind hope for a United States of the world, a "family of nations", a "world association" [fol. 15!-10] based on the United Nations, including a "world legion". Says one spokesman: "An international constitution and government will be a postwar necessity." Others argue for a "World Bill of Rights". Others say the evidence shows that the hopes of the world are for the League of Nations again; and one college official says that the World Court for international arbitration must be made the key in a revived League. One of the president's own cabinet members says: 'A world organization, with the United Nations as its base, will determine the peace, and the postwar world will be policed by the allied powers.'

The vice-president declares: "The century • • • which will come out of this war can and must be the century of the common man"; and another cabinet member forecasts "the people's century". A professor of economy says that the new world which men hope to build will be "the world of the common man". Of like mind are those who speak of a "democratic revolution" throughout the world. Others warn of great difficulties in the way of "any attempt to force personal liberty and representative governments upon nations". The indisputable facts speak loudly to agree that the great obstacle to world domination by the democratic way of life is the totalitarian religious system with its headquarters at Vatican City. All in all, the trend of the nations is plainly toward the federation of all into a world

government that will be stronger than any of its parts, with power to enforce international law and to guarantee [fol. 15l-11] peace and security everywhere by an international police.

Those rulers and representatives of the people charged with the task of arranging the postwar conditions have a tremendous responsibility, not only before the people, but also before the great Universal Ruler, Jehovah God. The destiny of the nations and of the peoples is linked up therewith. Rightly the people are interested and deeply concerned; they do not want to be disappointed in the peace that will be made. Having fought and endured the hardships and privations of the war, they are entitled to know what to expect. It stands admitted that lasting peace and a "guarantee of permanent safety after the war" are promised and honestly desired and planned for by sincere men in authority. But who can give unfailing assurance that the peace made by imperfect men will work and lead to realizing all the fond hopes held forth?

There is only one authoritative answer to this vital question. It is Jehovah God's own infallible answer. His answer is recorded in the sacred Bible, the Book which is being overlooked and not consulted by the men of the world in all their proposals and plans for peace. Concerning this course the scripture says: "The wicked shall be turned into hell, and all the nations that forget God." (Psalm 9: 17) And, "There is a way that seemeth right unto a man: but the end thereof are the ways of death."—Proverbs 16: 25.

[fol. 15l-12] By the spirit of the Lord God his answer is made clear for explanation at this end of the world, in order that men of good-will may be guided into true peace without end and may avoid the snares of destruction. Nothing could be more pressing upon us than to consider God's answer now, before it is too late. The apostle calls Jehovah the "God of peace". (Romans 16: 20) Through the Beloved Son, whose "name shall be called • • • The Prince of Peace", Jehovah God gives a direct answer in the last book of the Bible, which book the Giver says shows "things which must shortly come to pass". (Revelation 1: 1) It shows the great obstacle to lasting peace, and who shall establish the desired peace by removing the centuries-old hindrance thereto. Concerning God's dominant part in the building of peace the Almighty One declares, at Isaiah

45:7: "I form the light, and create darkness; I make peace, and create evil [calamity]; I am Jehovah, that doeth all these things." (*Am. Rev. Ver.*) There can be no enduring peace except that which is made and approved by Him. It has been and will again be the mistake of short-sighted, self-conceited men to 'cry Peace'; "when there is no peace." —Jeremiah 8:11.

The great issue, which rises above all others in importance, is that of UNIVERSAL DOMINATION. That is to say, Who is supreme in the universe and who shall rule it? Who is the Most High and Almighty God? That issue was raised by the great rebel and adversary of Jehovah and who is [fol. 151-13] therefore called "Satan the Devil". The question for determination was raised by him in the days of Eden and in connection with perfect man on earth. Now, since 1914, by the casting of Satan and his demon organization out of their heavenly position and down to the earth, the issue has been forced for a showdown and is being pressed for a settlement right here at the earth. Hence at the earth the great battle of Armageddon will be fought. Therefore that battle is mightier than a mere total war between nations, and the destiny of the nations will be determined for all time by where or on whose side they stand in that universal conflict. This "battle of that great day of God Almighty" will put an end to all dispute over who shall rule the earth, Jehovah God or Satan the Devil.

The flood of Noah's day was a display of what God can do at the battle of Armageddon, and the Son of God said that 'as it was in the days of Noah, so shall it be also in the days of the Son of Man'. (Matthew 24:37-39) The Flood made a clean sweep of all the wicked on earth. Why, then, did not the earth remain righteous? Because the Devil and his demon hosts were permitted to remain; and this God permitted in order to test the integrity of men toward Him. Hence, when the race began to multiply, the Devil caused rebellion to break out among men in defiance of the Theocratic law of man's Creator. The leading organization in that breakaway from submission to the law of God was religious Babylon, which was a totalitarian organiza- [fol. 151-14] tion founded by Nimrod its king. The Babylonians hailed and idolized him as mightier than Jehovah. The native meaning of the name "Babylon", or "Bab-il", is "The gate of god", thereby referring to Satan the Devil as the contender against Jehovah's universal domination.

But Jehovah God called the organization "Ba-bel", which means "confusion".

From the start Babylon was organized for Satan, "the prince of this world," and was the enemy of the Most High God, Jehovah. Hence Babylon was and is used in the Bible as a symbol of the entire organization of Satan, who is the unfaithful Lucifer. Against the invisible ruler of that wicked organization Jehovah's prophet Isaiah was inspired to say: "Thou shalt take up this proverb against the king of Babylon, and say, * * * How art thou fallen from heaven, O Lucifer, son of the morning! how art thou cut down to the ground, which didst weaken the nations! For thou hast said in thine heart, I will ascend into heaven, I will exalt my throne above the stars of God: I will sit also upon the mount of the congregation, in the sides of the north: I will ascend above the heights of the clouds: I will be like the Most High."—Isaiah 14: 4, 12-14.

The foundation for ancient Babylon on earth was religion, and religion was made most prominent therein, as its mighty temples showed. Its ruler was a devout practicer of demonism, and united in himself religion and state. Therefore Babylon was also used as a symbol of that which is the [fol. 15l-15] chief link or binding tie between the invisible demons and men on earth, namely, organized religion, which is demonism. The famous British cardinal Newman, in his *Essay on Development*, frankly states that his religious organization undertook to "transmute the very instruments and appendages of DEMON-worship to an evangelical use" and that religion's many formalisms and knickknacks not mentioned in the Bible, "are all of pagan origin, and sanctified by their adoption into the [Roman Catholic] Church". The Protestant systems of Western Europe and America recognize that religious organization as their "mother", and so speak. In Scripture Babylon is symbolized as an unclean woman, and therefore the same symbol applies to "organized religion". The aim of ancient Babylon was world domination, and found its greatest fulfillment in the days of King Nebuchadnezzar, the mighty practicer and patron of religion. What powerful religious organization is it today that has as its declared aim the world's domination and commands all men to be subject to its religious head for their salvation? There is only one answer, and that is, The one which is still the mightiest religious organization in "Christendom" and in all the earth. There-

fore "organized religion" of "Christendom", both the mother system and the daughters thereof, seeks to occupy the position foretold at Revelation 17: 18, 15, which reads: "And the woman which thou sawest is that great city, which reigneth over the kings of the earth. * * * The [fol. 151-16] waters which thou sawest, where the whore sitteth, are peoples, and multitudes, and nations, and tongues."

Note now the Scriptural answer to our question concerning peace as given by the great Revealer of secrets in Revelation, chapter seventeen. The World War was stopped in 1918. The implement that was then prescribed and provided to maintain the peace was the League of Nations with its World Court, which, eventually, was joined by fifty-seven nations of the world. The United States did not join the League, but did become a member of the World Court and also signed the Kellogg Peace Pact of 1928 renouncing war as a means of settlement of controversies. This League was hailed by the Protestant federal council of religious organizations of America as "the political expression of the Kingdom of God on earth", but it was not so styled by the religious ruler at Vatican City. By the London Treaty of 1915 between Italy and Britain he was shut out of the peace conference and had no direct part in the creation of the League of Nations. It was therefore never popular with the chief religious organization on earth, because she could not ride it. Her past history shows, however, that anything which she can use, even be it the very things of demonism, she will sanctify to her use. Will she yet sanctify the League?

The League of Nations, with world power and authority and fifty-seven members, was a scarlet-colored political creature, new and unusual but imaging in respects the seven world powers of human history. It combined also the living relics of all seven of them. It is therefore an [fol. 151-17] added world power, the "eighth" one. In the prophecy of Daniel a political governing creature or organization is symbolized by a beast. In harmony therewith, the League of Nations is symbolized, in Revelation 17: 3, as a "scarlet coloured beast, full of names of blasphemy, having seven heads and ten horns". No crowns or diadems are mentioned as on its heads or horns, because separate national sovereignties are given up in the interest of world unity.

As for its names of blasphemy, "blasphemy" here means the ascribing to men that which belongs to God or which Almighty God alone can do. In connection with this association of nations, it is noted that its creators and backers make for it promises that it will do what God's Word plainly declares only his Theocratic Government or Kingdom by Christ Jesus will do. Thereby these false political and religious prophets paste the beastly creature with "names of blasphemy". Thereby they cause it to "stand in the holy place", "where it ought not." (Matthew 24:15; Mark 13:14) This desolates men's faith in God and in his ability to fulfill His promises. It makes men forget God and fills them with a contempt for His Word and power. In their glorifying of self-help and in their self-conceited effort to run ahead of God and to capture the glory for themselves, they trample on His Word and put themselves in opposition to God and his kingdom and are guilty of creature-worship. Rejecting the Word of the Lord, what wisdom is in them? (Jeremiah 8:9) They have no vision of Jehovah's Righteous Government by Christ, [fol. 151-18] and the result is disastrous to the people. "Where there is no vision, the people perish," says the proverb.—Proverbs 29:18.

The League of Nations was a composite or collective creature, a descendant of and a summing up of the previous seven world powers. Concerning it God's Word says: "And the beast that was, and is not, even he is the eighth, and is of the seven, and goeth into perdition." (Revelation 17:11) It can now be said that the League "was, and is not". What is the reason therefor? The League, as it was, operated under the domination of the seventh world power, the British Empire, which is a democratic and Protestant world power such as the world had never seen before. That was the wrong management to please the mighty religious organization hungering for world dominance. Immediately after the League's establishment Catholic Action was organized world-wide, but particularly in the United States, which was independent of the League. Then Fascism and Nazism were organized and maneuvered into power, and seized control in Italy and Germany.

Seven years after putting the liberal government to the side, the Fascist dictator signed a concordat with the Vatican, and Vatican City was made a political state, demanding political recognition by all nations of earth. Four years

later, with the help of Catholic Action, the Nazi leader abolished the German Republic and signed a concordat with the head of his church. This was followed by acts of contempt of the League, sabotaging it. Japan began her aggressions against China, a League member. The Nazi dictator treated the Versailles Peace Treaty like a scrap of [fol. 151-19] paper, and resigned from the League. The Fascist dictator committed his assault upon Ethiopia, a League member, and, because peeved at the League's treatment, he resigned therefrom. Japan also resigned from it. Russia was dropped from the League. Then the Nazi dictator assaulted other League members, Austria, Czechoslovakia, Poland, and others, including the League's main pillar, the island stronghold of Britain. On November 20, 1940, at Vienna, the Axis Powers and Japan and Hungary signed a "new League of Nations", and four days later the Vatican broadcast a mass and a prayer for a religious peace and for a new order of things. With Switzerland like a tiny island in the midst of countries weltering in total war, and with invasion and partition of Switzerland being threatened, the League palace at Geneva was obliged to shut up. Though forty members still profess to adhere to the League, the League is in effect in a state of suspended animation, and needs to be revived if it is ever to live again. It has gone into the abyss of inaction and ineffectiveness. It "is not".

Will the League remain in the pit? Again the Word of God gives answer: "The beast that thou sawest was, and is not; and is about to come up out of the abyss, and to go into perdition. And they that dwell on the earth shall wonder, they whose name hath not been written in the book of life from the foundation of the world, when they behold the beast, how that he was, and is not, and shall be present." (Revelation 17:8, *Am. Rev. Ver.*, margin) The association of worldly nations will rise again. The fight between "the [fol. 151-20] king of the north" and "the king of the south", being for WORLD domination, makes such an outcome of this total war unavoidable. The necessities of meeting the totalitarian aggressions and stopping them are forcing the nations to that final confederation of nations for the new order, whatever its form. A prominent New York clergyman recently said (July 19, 1942): "It is a world family now or else collective suicide. Something in the very nature of things is forcing us to that; something greater than ourselves is after

us. Turn anywhere one will, one sees this." (New York *Times*)

But mark this: The prophecy shows that when the "beast" comes out of the abyss at the end of this total war it comes out with the woman "Babylon" on its back, or she climbs upon its back as soon as it gets out. That means that "organized religion", and this time the religious organization with headquarters at Vatican City, will ride and exercise guiding influence over the League beast. To this day the Vatican has not canceled its concordats with the Nazi and Fascist dictators, and in May of this year it opened diplomatic relations with the sneak attackers of Pearl Harbor and has ignored the several protests of the United States Department of State thereat. The pope's five-point program calls for the Vatican's free action without interference as one of the requirements of his "new order founded on moral principles". Likewise the United Nations opposing the totalitarian powers voice their pledge of freedom of religion as one of the four freedoms to be secured when peace comes. The repeated cries and demands of politicians and religionists for "More religion!" make certain that [fol. 151-21] religion will ride the peace beast. The personal envoy sent by the president of the nation to the Vatican to work together with the religious chief for peace is another forerunner of the courtesy and deference that will be paid to the "woman" named Babylon when the total war ends. Her intercourse then with the rulers of the world will satisfy her worldly desires, and she will pronounce the peace arrangement a "peace of Christianity", another one of those "names of blasphemy" tacked on the "beast".

The question now comes up for answer, Will religion guarantee that the man-made peace will last? When "organized religion" climbs upon the back of the beast, then she is guilty of her last act of spiritual fornication with the world, and then her final judgment begins. Concerning this the prophetic record says: "Come hither; I will shew unto thee the judgment of the great whore that sitteth upon many waters: with whom the kings of the earth have committed fornication, * * * And I saw a woman sit upon a scarlet coloured beast, full of names of blasphemy, having seven heads and ten horns. And upon her forehead was a name written, MYSTERY, BABYLON THE GREAT, THE MOTHER OF HARLOTS AND ABOMINATIONS OF THE EARTH." (Revelation 17:1, 2, 3, 5) Whatever

peace the religious woman enforces between the nations, the vital question is, Will she lead the rulers and nations into the peace with God? Let no one be deceived by the claims and boasts of "organized religion"; for God's Word answers, No. She will lead in a peacetime WAR against the Lamb of God, Christ Jesus the King, and the "peace" beast [fol. 151-22] will charge where she drives it. Under her influence the rulers, or the ten horns of the beast, do not give their power to the Lamb. The prophetic record reads: "And the ten horns which thou sawest are ten kings, which have received no kingdom as yet [because not yet "blessed" by the woman Babylon]; but receive power as kings one hour with the beast. These have one mind, and shall give their power and strength unto the beast." Then what? "These shall make war with the Lamb, and the Lamb shall overcome them: for he is Lord of lords, and King of kings: and they that are with him are called, and chosen, and faithful."—Revelation 17:11-14.

Outstanding statesmen of the world have frequently referred in public to the battle of Armageddon and to the nations' being gathered there, but have failed to mention that the record at Revelation 16:14-16 says it is the wicked DEMONS that are the powers doing the gathering. With such information available to them, the nations should have put themselves on guard against all demonism, which is religion. But they have not done so. They have fallen for and now demand "More religion", and religion is demonism and against Jehovah God and his Theocratic Government. What has religion done to stop the march of the nations to Armageddon? Nothing; absolutely nothing! It has marched right along with the nations and blessed them in their course. The superhuman demons are not leading the nations to peace, but to war and destruction. With demons influencing the course of the nations there can never be a permanent peace. Before the flood of Noah's day the earth [fol. 151-23] was filled with violence, which was due to the demons, and then suddenly the end of that old world came. Is the greater violence now the sure sign of the FINAL END at hand? In the light of the Scriptures, Yes! and it is time for the nations to take note that religion's ambition, under the lead of the Vatican's Hierarchy, to dominate the earth is but the demons' idea and purpose to tighten control of this earth and its people and thereby hold control of all in

opposition to Jehovah God and in denial of His universal domination!

"War with the Lamb" means that under the guidance and influence of "organized religion" the nations will forget Jehovah God and his Theocratic Government by Christ Jesus. They will choose to rule themselves under the sanction and blessing of the "woman" Babylon. That is an abomination to Almighty God, because it is in opposition to Him. How will such an "abomination of desolation" make war with the Lamb? By continuing their present hatred and persecution upon those who are with him, that is, on his side, namely, the "called, and chosen, and faithful". (Acts 5:38, 39) That means, while guaranteeing religion they will oppose true Christianity. They will continue to take action against Jehovah's witnesses and their companions who announced Jehovah's kingdom under Christ and who refuse to get on the 'peace beast' and to ride along with religion. Incensed at the persistent proclamation of God's kingdom, and because it shows up the false, hypocritical position of the religious "New World order", the beast with all its heads and horns, and with the "woman" Babylon spurring it on, will make a desperate try at goring [fol. 15l-24] and trampling to death the Kingdom proclamation. By force it will succeed in stopping the preaching thereof. But Christ Jesus warned that when this witness work is finished, and when Almighty God permits it to be stopped by the "woman" and the beast, "then shall the end come" for them.—Matthew 24:14.

With Jehovah's witnesses put under complete restraint for disturbing the sensibilities of religionists and totalitarian statesmen, the "new order" rulers will cry "Peace"; but there will be no peace, that is, none with Jehovah God and his Lamb, "the King of kings." God's Word warns: "When they shall say, Peace and safety; then sudden destruction cometh upon them, as travail upon a woman with child; and they shall not escape." (1 Thessalonians 5:3) Once again we ask the leading question, "PEACE—CAN IT LAST?" and God's definite answer is, No! Man-made peace under religion's "blessing" will be very short-lived, and political kings and rulers will not long enjoy it. The record says they "receive power as kings ONE HOUR with the beast". "One hour," with God, denotes a very brief time; and suddenly those ten horns and the beast will go into perdition, not peacefully, but violently, at the battle of Armageddon.

This time the beast and its heads and horns will go, not into the "bottomless pit", but into the "lake of fire and brimstone", to be utterly consumed and destroyed.—Revelation 19:20; 20:10.

But what shall befall the "woman Babylon", "organized religion," riding the beast? At the end of that "one hour" of the rulers with the beast, they will be forced to see the [fol. 151-25] hypocrisy of religion and that it deceived them with false hopes and led them into a hopeless position with destruction as the only outcome. The prophetic word reads: "And the ten horns which thou sawest, and the beast, these shall hate the harlot, and shall make her desolate and naked, and shall eat her flesh, and shall burn her utterly with fire. For God did put in their hearts to do his mind, and to come to one mind, and to give their kingdom unto the beast, until the words of God should be accomplished." (Revelation 17:16, 17, *Am. Rev. Ver.*) Will the religionists and all other persecutors of Jehovah's witnesses take note, please, that it is not Jehovah's faithful witnesses that will thus violently break up "organized religion"? The world powers will do it, the very ones with whom religion is committing spiritual fornication by making common cause with them against Jehovah's Theocracy and those who bear witness to it.—Ezekiel 16:28-43; 23:17-31.

"Organized religion," called "Christendom", has professed to be the city called by God's name and has thus deceived the rulers and their subjects. What shall happen to the nations and their association for world peace when the Lord God by Christ Jesus suddenly begins the Armageddon fight and divides the forces of his enemies and then the "ten horns" overthrow "organized religion"? The "horns" will not thus act out of love for Christianity or for The Theocracy. Jehovah God thereby executes his judgment upon "organized religion", and to her destroyers he holds out the cup of destruction and says: "Ye shall certainly drink. For, lo, I begin to bring evil on the city which is [fol. 151-26] called by my name, and should ye be utterly unpunished? Ye shall not be unpunished: for I will call for a sword upon all the inhabitants of the earth, saith the LORD of hosts. Thus saith the LORD of hosts, Behold, evil shall go forth from nation to nation, and a great whirlwind shall be raised up from the coasts of the earth. And the slain of the LORD [Jehovah] shall be at that day from one

end of the earth even unto the other end of the earth."—Jeremiah 25:28, 29, 32, 33.

Thus once and for all time the primary issue will be settled, Shall the earth be included in Jehovah's universal domination or shall it continue under "Babylon", which is Satan's organization? Satan and all his organization, visible and invisible, will be destroyed at Armageddon, and the issue will be closed in eternal vindication of Jehovah's name. Before going down into destruction the nations shall be made to know that He is Jehovah.—Ezekiel 38:23; Zephaniah 3:8.

With the early fate of the "woman" Babylon, or "organized religion", set forth so clearly in God's sure word of prophecy, the warning cry is sent out to the people who seek life and endless peace and who desire to be God's people: "Babylon the great is fallen, is fallen, and is become the habitation of devils, and the hold of every foul spirit, and a cage of every unclean and hateful bird * * * Come out of her, my people, that ye be not partakers of her sins, and that ye receive not of her plagues. For her sins have reached unto heaven, and God hath remembered her iniquities." (Revelation 18:2, 4, 5) This is no time to be deceived. Religion's domination in the coming peace of the so-called "new order" will cause the majority of earth's [fol. 15l-27] dwellers to wonder in admiration of the "beast" of world organization for peace. The fate of such for refusing God's truth and warning is stated in these words: "And they that dwell on the earth shall wonder, whose names were not written in the book of life from the foundation of the world, when they behold the beast that was, and is not, and yet is."—Revelation 17:8.

The faithful witnesses of Jehovah God will not wonder and be deceived. They will plow right on through the persecution and opposition, keeping on preaching His Theocracy by Christ Jesus and the new world of righteousness and peace which it shall bring in, until the witness work is finished and the final end comes. The people of good-will who now heed the Kingdom message of the Good Shepherd will likewise not be deceived and wonder at and admire the "abomination of desolation" as it stands deceptively in the "holy place" of God's Righteous Government. In the choice between the "beast" ridden by the "woman" Babylon and "The Lamb", they choose Jehovah's "Lamb", who is "King of kings, and Lord of lords". They come

out from Babylon, leaving her and the "beast" and its "horns" to their destiny at God Almighty's hands. They without delay heed the warning and instruction of the King, who foretold the appearing of the counterfeit makeshift for peace and said: "When ye, therefore, shall see the abomination of desolation, spoken of by Daniel the prophet, stand in the holy place, (whoso readeth, let him understand:) then let them which be in Judaea flee into the mountains: for then shall be great tribulation, such as was not [fol. 151-28] since the beginning of the world to this time, no, nor ever shall be."—Matthew 24:15, 16, 21.

Only those who flee to the "mountains" designated by the King will survive that greatest of all tribulations, Armageddon, and enter into the righteous new world of peace without end. Only such will have their names written in the book of life from the foundation of the new world. To them, the "other sheep", the Good Shepherd and King will say: "Come, ye blessed of my Father, inherit the kingdom [blessings] prepared for you from the foundation of the world." (Matthew 25:34) The only "mountains" to which to escape for protection and for survival unto life everlasting are Jehovah God, the great "Rock of ages", and Christ Jesus, the 'express image of the Father's person'. (Isaiah 26:4, *Am. Rev. Ver.*, margin; Hebrews 1:3) Jehovah's prophecy by Daniel likens His Theocratic Government by Christ Jesus to a "great mountain" that "filled the whole earth". But first that heavenly Government breaks in pieces and removes for ever the great obstacle to lasting peace on earth, namely, Satan's mighty organization and its religion. Instead, Jehovah's Government shall "stand for ever".—Daniel 2:35, 44, 45.

Concerning the King of Jehovah's Theocratic Rule it is written: "And the government shall be upon his shoulder: and his name shall be called Wonderful, Counsellor, Mighty God, Everlasting Father, Prince of Peace. Of the increase of his government and of peace there shall be no end, • • • The zeal of Jehovah of hosts will perform this." (Isaiah 9:6, 7, *Am. Rev. Ver.*) Concerning the peacefulness of his reign world-wide it is further written: "The mountains [fol. 151-29] shall bring peace to the people, and the little hills, by righteousness. In his days shall the righteous flourish; and abundance of peace so long as the moon endureth. He shall have dominion also from sea to sea, and from the river unto the ends of the earth." (Psalm 72:3,

7, 8) Concerning the freedom from war, freedom from want, and freedom from fear on the part of those who survive Armageddon and enter the new world under The Theocracy it is written: "Nation shall not lift up a sword against nation, neither shall they learn war any more. But they shall sit every man under his vine and under his fig tree; and none shall make them afraid: for the mouth of the LORD [Jehovah] of hosts hath spoken it."—Micah 4:3, 4.

Fuller information regarding the blessings of peace and righteousness and endless life on earth under God's kingdom you will find in the new book, released here at this Assembly for the first time, entitled

"THE NEW WORLD".

The above is the text of the speech "Peace—Can It Last?" delivered by the president of the WATCH TOWER SOCIETY, Sunday, September 20, 1942, at the public meeting of the New World Theocratic Assembly. This unique Assembly included more than eighty simultaneous conventions in cities in America, British Isles, Sweden, Central and South America, West and South Africa, and Hawaii. The president spoke at the key convention in Cleveland, Ohio, and his speech was conducted by a network of telephone lines direct to like conventions in fifty-one other cities in the United States, besides being radiocast over WBBR. The combined attendance in the United States at the lecture was 126,000. The speech is here published in behalf of the millions of persons of good-will who did not hear.

[fol. 16] IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

[Title omitted]

AMENDED MOTION FOR A NEW TRIAL—Filed November 7, 1942

Now comes the defendant in the above entitled and numbered cause and with leave of court first had and obtained files and presents this her amended motion for a new trial and as grounds therefor says:

1. The judgment of the court is contrary to the law.

2. The judgment of the court is against the evidence, is not supported by any evidence or law.

3. The court committed reversible error in overruling defendant's motion to quash the complaint.

4. The court committed reversible error in overruling defendant's motion for a finding of not guilty and for a judgment of acquittal filed at the close of the case.

5. The court committed reversible error in failing to hold that the ordinance on its face and as construed and applied is violative of the federal constitution in that it abridges defendant's rights of freedom of assembly, the use of the public streets and sidewalks, of speech, of press and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendment to the United States Constitution.

6. The court committed reversible error in failing to hold that the ordinance on its face and as construed is void because it is in excess of the police powers of the State of Texas and the City of Dallas and is unreasonable and arbi-
[fol. 17] trary in the *the* means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof is violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Wherefore, defendant prays that this court set aside the judgment heretofore rendered herein and grant the defendant a new trial herein.

(Signed) Hayden C. Covington, (Signed) Tom S. Williams, Attorneys for Defendant.

[File endorsement omitted.]

IN THE COUNTY CRIMINAL COURT OF DALLAS COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—November 7, 1942

On this the 7th day of November, A. D., 1942, came on to be heard and considered the defendant's motion for new trial, as amended and filed with leave of court, and the court, after having heard and considered argument of coun-

sel thereon, is of the opinion that said amended motion for new trial should be overruled; and,

It is hereby accordingly Ordered, Adjudged and Decreed by the Court that the defendant's amended motion for new trial be and the same is hereby in all things overruled, to which action of the court the defendant excepted.

[fol. 18] (Signed) Winter King, Judge of the County Criminal Court of Dallas County, Texas.

In County Criminal Court of Dallas County

[Title omitted]

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed November 7, 1942

Petition for Appeal

Considering herself aggrieved by the final decision of the County Criminal Court of Dallas County, Texas, in the above entitled cause, the appellant herein, Mrs. Ella Jamison, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon,

Statement

This case is one in which the validity of state legislation is drawn in question to-wit, an ordinance of the city of Dallas, Texas, known as Article 140-7 of Ordinance No. 3251 reading as follows:

"It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement or sign of any description for the purpose of advertising, or to wear any costume for the purpose of attracting attention of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising [fol. 19] device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars."

Said ordinance was duly passed and approved by the City Council *by* the City of Dallas and was in force and effect

at the time of the offense alleged in the complaint. Said ordinance is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution. The County Criminal Court of Dallas County, Texas, is the court of last resort in this cause in the State of Texas in which a decision of that court could be had and the decision of that court is in favor of the validity of said ordinance.

The County Criminal Court of Dallas County, Texas, became the court of last resort in this cause by reason of the fact that this criminal action originated in the Corporation Court of the City of Dallas and was duly appealed to the County Criminal Court where the cause was tried on appeal *de novo*, and the fine assessed against the appellant did not and could not exceed the sum of $100.00. Under Article 53 of the Code of Criminal Procedure in such circumstance an appeal cannot be had to the Court of Criminal Appeals of Texas, the highest appellate court of criminal cases in Texas, and said judgment is final.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. sec. 344 and 354) and Section 237 (a) of the Judicial Code, the appellant respectfully shows this Court that the case is one in which, under the legislation in force when the [fol. 20] Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, Under Section 237 (a) of the Judicial Code (28 U. S. C., s. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The County Criminal Court of Dallas County, Texas, court of last resort in this cause, rendered its decision and final judgment herein on the 4th day of November, 1942, and the same has been duly entered of record.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that there are errors committed by the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

First: The County Criminal Court committed reversible error in failing to hold that said ordinance is void on its

face because it is in excess of the police power of the State of Texas or the City of Dallas and the means employed have no reasonable relation to the police powers of the city or state nor do the ends aimed at by the ordinance justify the means employed by the ordinance, therefore it is unreasonable and deprives defendant of her property and liberty without due process of law and equal protection of the law, all contrary to the Constitution of the United States, Fourteenth Amendment, Section 1.

Second: The County Criminal Court committed reversible error in failing to hold that said ordinance is void on its face because by its terms it expressly abridges the people's inherent and unalienable rights of freedom of communication, of assembly, the use of the public sidewalks and streets, [fol. 21] freedom of speech and of press, all contrary to the First and Fourteenth Amendments to the United States Constitution.

Third: The County Criminal Court committed reversible error in failing to hold that said ordinance is unconstitutional and void as construed and applied to the facts and circumstances developed in the evidence because it abridges the defendant-appellant of her rights of freedoms of assembly, speech, press, the right to use the streets and sidewalks for a lawful purpose, and also abridges the defendant-appellant of her right to worship almighty God Jehovah by serving as His ordained minister preaching the Gospel of God's Kingdom, all of which rights are denied contrary to the First and Fourteenth Amendments to the United States Constitution.

Fourth: The County Criminal Court committed reversible error in overruling appellant's motion to quash the complaint.

Fifth: The County Criminal Court committed reversible error in overruling appellant's motion for a finding of *not guilty* and for a judgment of acquittal.

Sixth: The County Criminal Court committed reversible error in rendering and entering judgment against appellant.

Seventh: The County Criminal Court committed reversible error in overruling appellant's amended motion for a new trial.

Prayer for Reversal

For and on account of the above errors, the appellant, Mrs. Ella Jamison, prays that the said judgment of the County Criminal Court of Dallas County, Texas, hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and [fols. 22-41] a judgment rendered in favor of appellant and for her costs.

(Signed) Hayden C. Covington, Attorney for Appellant, 117 Adams Street, Brooklyn, New York;
(Signed) Tom S. Williams, Sterling Building, Sulphur Springs, Texas, Attorneys for Appellant.

[File endorsement omitted.]

[fol. 42] In County Criminal Court of Dallas County

[Title omitted]

Order Allowing Appeal—November 7, 1942

Appellant, Ella Jamison, in the above entitled suit and cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and rendered by the County Criminal Court of Dallas County, Texas, on November 4, 1942, and duly entered of record in the Criminal Minutes of this court.

It appearing that the appellant in her motions and argu-[fol. 43] ment of counsel made in her behalf in this cause attacked the ordinance in question on the grounds, as contended by her, that it was void on its face and in excess of the police power and unreasonable and that as construed and applied it was violative of the fundamental freedoms guaranteed and secured by the First and Fourteenth Amendments to the United States Constitution and for those reasons violated the Constitution of the United States. All of these contentions were overruled by the decision and judgment of this court rendered herein.

It appearing that appellant has presented and filed her petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date of said final judgment of the County

Criminal Court, the court of last resort in Texas under which a decision can be had in this cause, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the County Criminal Court of Dallas County, Texas, in the aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the County Criminal Court of Dallas County, Texas, shall prepare and certify a transcript of the record, stipulation of the evidence together with all exhibits in their original form incorporated by reference, the proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from this date.

And It Is Further Ordered that a bond for costs on ap-
[fols. 44-56] peal and for the appearance of the appellant after determination of the appeal be fixed in the amount of Five Hundred Dollars ($500.00) and appellant having presented an undertaking or bond in the sum of Five Hundred Dollars ($500.00) executed by good and sufficient sureties, it is further ordered that such undertaking or bond be and the same is hereby approved and ordered filed.

And It Is Further Ordered that the issuance of a capias pro*fine* be stayed pending a final determination of this appeal and until a return of the mandate from the United States Supreme Court.

Done at Dallas, Dallas County, Texas, on this the 7th day of November, A. D. 1942.

(Signed) Winter King, Judge of County Criminal Court of Dallas County, Texas.

[fol. 57] In Supreme Court of the United States

Statement of Points Relied On—Filed December 1, 1942

Comes now appellant, Ella Jamison, in the above entitled cause and states that the points upon which she intends to

rely in the Supreme Court of the United States in this cause are as follows:

Point 1. The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of assembly, the use of the public streets and sidewalks, of speech, of press, and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendment to the United States Constitution.

Point 2. The ordinance in question is void upon its face because by its terms it is in excess of the police power of the State of Texas and the City of Dallas and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

For the above reasons the judgment of the Dallas County Criminal Court of Texas should be reversed.

(Signed) Hayden C. Covington, 117 Adams Street, Brooklyn, New York; Tom S. Williams, Sterling Building, Sulphur Springs, Texas.

[fol. 58] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed December 17, 1942

To the Clerk of the Supreme Court of the United States:

You will please print each of the documents designated below, contained in the above captioned case now on file with your office, forwarded to you by the Clerk of the Criminal Court of Dallas County, Texas, to wit:

1. Complaint.
2. Motion to Quash Complaint.
3. Transcript of Appeal.
4. Defendant's motion to quash complaint.
5. Order overruling defendant's motion to quash complaint.

6. Defendant's motion for a finding of Not Guilty.
7. Order overruling defendant's motion for a finding of Not Guilty and for a judgment of acquittal.
8. Judgment.
9. Reporter's Statement of Facts.
10. Defendant's Amended Motion for a new trial.
[fol. 59] 11. Order overruling defendant's amended motion for a new trial.
12. Petition for appeal, statement, assignments of error and prayer for reversal.
13. Citation.
14. Order allowing appeal.
15. Statement of points to be relied upon.
16. Exhibit 4, being entire text of address delivered Sunday, September 20, 1942, by the President of the Watchtower Bible & Tract Society, Inc., entitled "Peace—Can it last?"

Dated, December 16, 1942.

Hayden C. Covington, Attorney for Appellant.

* * * * * * *

[fol. 60] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF QUESTION OF JURISDICTION—December 21, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the argument on the merits. Counsel are requested to discuss in their briefs and on the oral argument whether under the law and practice of Texas the judgment can be fully reviewed on this record by a higher state court by habeas corpus or other proceedings.

Endorsed on Cover: File No. 47,059, Texas, Dallas County Criminal Court, Term No. 558. Mrs. Ella Jamison, Appellant, vs. The State of Texas. Filed December 1, 1942. Term No. 558 O. T. 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON,

Appellant,

vs.

THE STATE OF TEXAS.

APPEAL FROM THE CRIMINAL COURT OF DALLAS COUNTY, TEXAS.

STATEMENT AS TO JURISDICTION.

HAYDEN C. COVINGTON,
TOM S. WILLIAMS,
Counsel for Appellant.

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STATUTES CITED

Constitution of the United States:
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Code of Criminal Procedure of Texas, 1925, Article 53 ..
Freund's "The Police Power," p. 133, S. 143 12
Judicial Code, Section 237(a) (28 U.S.C.A. 344a), as amended by the Acts of January 31, 1928, c. 14, 45 Stat. 54, and April 26, 1928, c. 440, 45 Stat. 466 1
McQuillen on Municipal Corporations, Vol. 3, 2d ed. p. 122 11
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

STATE OF TEXAS,

vs.

Appellee,

MRS. ELLA JAMISON,

Appellant.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, as Amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code, or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a

matter of right on writ of error. This case offers a situation covered in said statutes.

Texas Legislation Drawn in Question.

The legislation, the constitutionality and validity of which as construed and applied to appellant, here drawn in question is an ordinance of the City of Dallas, Texas, known as Article 1407 of Ordinance No. 3251 reading as follows:

> "It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement or sign of any description for the purpose of advertising, or to wear any costume for the purpose of attracting attention of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars."

The foregoing ordinance appears in the agreed statement of facts recorded by the stenographer at pages 10 and 11 (R. 24-25).

The County Criminal Court of Dallas County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the ordinance was valid and constitutional and that it did not abridge appellant's rights of assembly, the use of the public sidewalks and streets, freedom of speech, freedom of press, and freedom to worship Almighty God according to the dictates of her conscience and as commanded in God's law the Bible contrary to the First and Fourteenth Amendments to the United States Constitution. Said court also held that said ordinance was not unreasonable, arbitrary and in excess of the police powers so as to violate the due process and equal protection clauses

of the Fourteenth Amendment to the *federal constitution*. Accordingly, that court of last resort of the State of Texas sustained the application of the ordinance to appellant and decided in favor of the validity of the same under the *federal constitution* and held it to be constitutional on its face and as construed and applied.

County Criminal Court—Court of Last Resort.

Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed does not exceed the sum of $100.00. Other articles of the Code of Criminal Procedure confer exclusive appellate jurisdiction involving misdemeanor offenses where the fine does not exceed $100.00 and where the case originated in the justice or corporation court. *Ex parte Largent*, 162 S. W. (2nd) 419. The County Criminal Court is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Criminal Court is not the highest criminal court of appeals in the state. This court has so held in other cases. *Thomas* v. *Rabb*, 287 U. S. 564; *Bacon* v. *Texas*, 163 U. S. 207; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *S. A. & A. P. R. Co.* v. *Wagner*, 241 U. S. 476, 477. See also *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 453.

Timeliness.

The judgment of the County Criminal Court assessing a fine of $5.00 and costs was rendered and entered on the 4th day of November, A. D. 1942. (R. 4-5). The judgment of the Dallas County Criminal Court is now a final judgment. This petition for appeal is duly presented and filed within

three months from the date of such final judgment and is therefore timely as required by law.

Statement of Nature of Case and Rulings of Court.

The rulings of the County Criminal Court of Dallas County, Texas, are such as to bring this case within the jurisdictional provisions relied on above.

Appellant, Mrs. Ella Jamison, is an ordained minister of Jehovah God in a covenant with Him to preach the gospel of God's kingdom, The Theocracy, by following in the footsteps of Christ Jesus, the faithful and true witness. That she is associated with the Oak Cliff Dallas Company of Jehovah's witnesses in the performance of her ministerial activities (S. F. 3, R. 17-26).

While discharging her duties as an ordained minister by means of peacefully, orderly, and quietly distributing handbills and leaflets advertising a public sermon or discourse on the Bible prophecies concerning a topic of present day interest, to wit, PEACE. CAN IT LAST? to be delivered by N. H. Knorr, president of the Watchtower Society on September 20, 1942, she was arrested and charged with a violation of the aforesaid ordinance by means of handing such printed invitations to pedestrians whom she met while walking down the sidewalk along South Montclair Street in the City of Dallas, Texas (S. F. 2, R. 16-26).

Prior to September 20, 1942 the Dallas Company of Jehovah's witnesses arranged to join a nation-wide assembly of Jehovah's witnesses to be held in more than 52 cities of the United States. Vickery Park was to be tied in with the "key city" Cleveland, Ohio, by telephone wire communication to carry the discourse advertised. The holding of this public meeting in Dallas was one of the means employed by appellant and other of Jehovah's witnesses in preaching the gospel. The public in Dallas were invited to attend

and listen. There were no charges for admission and no collection of any kind was solicited from those attending; but it was free of charge. The speech "PEACE. CAN IT LAST?" was also printed in booklet form and distributed free of charge to all who attended the assembly. This sermon related to a discussion of post-war conditions from the view point of Bible prophecy on the subject. It shows that there are certain dangers in the coming peace conference which must be avoided in order to win the peace. If these dangers are not discovered by the people they cannot be avoided the discourse points out. The discourse pointed out definitely the dangers to be avoided in order to win the peace. Also there was pointed out the explanation of Revelation 17:8 concerning the "beast that was, and is not, and yet is" and also clearly showed who will establish the enduring peace. The printed report of the speech "PEACE. CAN IT LAST?" was introduced in evidence and made a part of the record and identified as Exhibit 4 (S. F. 4; R. 6-17). An examination of the contents of the exhibit shows that it was not on a commercial or selfish subject and that the convention assembly that the public was invited to attend by appellant was not for a commercial or profit purpose.

The leaflet inviting the public to attend which was distributed by the appellant reads as follows:

> "Will Postwar Conditions bring a New World? It is vital to know now. Hear Peace, Can it Last? By N. H. Knorr, addressing the Nation-wide Assembly of Jehovah's witnesses simultaneously in more than 50 cities. Key Assembly, Cleveland, Ohio. Sunday, September 20, 3:00 p. m., Vickery Park, Highway 75, Greenville Avenue, Dallas, Texas. *Admission free. No collection.* This is your invitation to attend the Nation-wide Assembly of Jehovah's witnesses, particularly the public address, Peace, Can It Last? By N. H. Knorr, President of the Watchtower Society as announced

overleaf. Also you will receive the uplifting hope of life in eternal youth in a new world, by reading Children, 384 pages, illustrated with unusual colored pictures, and bound in sky-blue cloth, stamped with gold and embossed; and Hope 64 pages, showing the hope for the dead and for the survivors in a righteous world. Both Watchtower publications mailed to you postage prepaid on your contribution of 25¢. Send to Watchtower, 117 Adams St., Brooklyn, N. Y."

This is identified as exhibit number 1 (S. F. 2-3).

The undisputed evidence shows that the book and booklet described on the leaflet was not distributed by appellant because no one inquired; but that if one inquired of appellant she would have offered to deliver them to their home for the contribution of 25¢ which was less than the actual cost price of publication and distribution. (S. F. 6-9; R. 16-26.) The book and booklet relate to an explanation of God's kingdom and not to any commercial pursuit or purpose. The book and booklet are exhibits number 3. (S. F. p. 8; R. 16-26.)

Appellant distributed the above described leaflet on the sidewalk in a quiet and orderly manner without being offensive to anyone. She did not scatter or throw any of the leaflets upon the sidewalks as she proceeded along the street; but she handed them only to pedestrians whom she met who were willing to receive them. (S. F. 4; R. 16-26) The appellant thus acted as a minister believing this to be her duty to preach and that if she failed to thus preach the Gospel in this manner that she would be everlastingly destroyed as recorded in Ezekiel 3:18; and Ezekiel 33:8-9. When first approached by the police officer he requested her to discontinue; but she refused and stated that she stood in the same position with regard to the request as did the Apostles of Jesus when requested to discontinue preaching who said: "We ought to obey God

rather than men" (Acts 5 29) "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye" (Acts 4:19). When she thus refused to discontinue the police officer arrested her. (S. F. 12).

Corporation Court Proceedings.

Appellant was charged by complaint filed in the Corporation Court of Dallas, Texas, with an alleged violation of the ordinance (R. 2-3). Among other things the complaint alleges: "carry, hold by hand, distribute, scatter and throw handbills as an advertising medium, in violation of and contrary to Art. 140-7 of Ord. 3251 of the Ordinances of the City of Dallas, Texas, upon the sidewalks of South Montclair Street" (R. 2-3). Upon trial in the Corporation Court appellant urged a motion to quash on the ground that the ordinance was unconstitutional (R. 3-4). The appellant was found guilty as charged in the Corporation Court and duly appealed by filing a bond (R. 4-5).

County Criminal Court Proceedings.

The trial in the County Criminal Court was *de novo* and evidence was in the form of an agreed statement of facts (S. F. 1-12; R. 16-26). In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was in excess of the police power of the state and that the means employed were unreasonable; because it abridged the people's inherent rights of freedom of assembly, the use of the streets and sidewalks, freedom of speech and of the press and freedom of communication; and, because as construed and applied it abridged the same rights (R. 8-9). The timely motion was overruled (R. 10-11).

At the close of all the evidence appellant duly filed and urged her motion for a judgment of acquittal and for an

order discharging appellant because: (1) The ordinance was unreasonable and in excess of the police powers of the state and denied liberty and property in violation of the Fourteenth Amendment to the United States Constitution; (2) The ordinance was void on its face because it abridges the rights of freedoms of assembly, speech, press and of the use of the public sidewalks contrary to the First and Fourteenth Amendments to the United States Constitution; and (3) The ordinance was void as construed and applied to the circumstances of appellant's activity because it abridges her rights of freedoms of assembly, speech, press, the lawful use of the public sidewalks and her right of freedom to worship Almighty God according to the dictates of her conscience contrary to the First and Fourteenth Amendments to the United States Constitution (R. 11-12). The motion was overruled and appellant excepted (R. 13). A final judgment convicting the appellant was rendered and entered and thereby appellant was fined $5.00 and costs (R. 14). A motion for new trial was timely filed and amended by leave of court in which motion the ordinance was attacked on the same grounds as above described (R. —). The motion for new trial was overruled and appellant excepted (R. —).

The County Criminal Court, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments had not been violated in applying the ordinance to the appellant's activities.

In the petition for appeal and the assignments of error filed with this jurisdictional statement, appellant complains of the judgment of the County Criminal Court of Dallas County, Texas, for and on account of each of the grounds

set forth in her brief, motions to quash and for judgment of acquittal filed in said court.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions Involved on Appeal.

FIRST.

The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of assembly, the use of the public streets and sidewalks, of speech, of press and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

SECOND.

The ordinance in question is void upon its face and as construed because by its terms it is in excess of the police power of the State of Texas and the City of Dallas and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Discussion.

The case was fully argued before the court below and many cases directly in point showing this type of ordinance to be unconstitutional and void were called to the attention of that court, including several decisions by this court which were quoted from at length. Without stating any reasons the County Criminal Court held the ordinance

valid thus completely ignoring applicable decisions by this court.

The highest Criminal Court of Texas has closed its doors to Jehovah's witnesses on the questions presented in cases of this character while at the same time granting relief by way of writ of habeas corpus to some persons to suit its own uncertain discretion. *Ex parte Largent*, 102 S. W. (2d) 419; *Ex parte Roquemore*, 131 S. W. 1101; *Ex parte Lewis*, 147 S. W. (2d) 478; *Ex parte Baker*, 78 S. W. (2d) 610; *Ex parte Faulkner*, 158 S. W. (2d) 525. The uncertainty of getting the Court of Criminal Appeals to take jurisdiction by way of writ of habeas corpus action leaves this court as the only court to appeal to for the purpose of protecting their constitutional rights.

The ordinance is clearly unconstitutional and void because of the fact that it is absolutely prohibitory and does not purport to be regulatory. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, a fortiori, invalid." (Mr. Justice Reed in *Jones* v. *City of Opelika*, 62 S. Ct. 1231.) Ordinances of Los Angeles, Milwaukee and Worcester containing prohibitory provisions substantially identical with the terms of this ordinance were declared invalid and unconstitutional in the case of *Schneider* v. *State*, 308 U. S. 147. The ordinance here questioned is identical with that declared unconstitutional by this court in the case of *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518. There the ordinance forbids any person to "distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card, or pamphlet" (p. 501). The holding of the County Criminal Court conflicts with this court's holding in the case of *Thornhill* v. *Alabama*, 310 U. S. 88, and in the case of *Carlson* v. *California*, 310 U. S. 102, where prohibitory legislation was declared invalid.

In *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504, this court said: "A state may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them." See also 3 *McQuillen on Municipal Corporations* 2nd 3d., p. 122. In *Ex parte Walrod*, 120 Pac. 2nd 783, the Criminal Court of Appeals of Oklahoma declared invalid an ordinance very similar to this one question on this appeal. See also *Ex parte Winnett et al.*, 121 Pac. 2nd 312.

The ordinance here is void under the doctrine of *Lovell* v. *Griffin*, 303 U. S. 444. This court's words in that case are appropriate here, to wit: "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little avail'."

This sort of ordinance is appropriately described by United States District Judge Underwood in *Zimmerman* v. *London*, 38 Fed. Supp. 582, where it is said: "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to a virtual prohibition upon such distribution. • • •"

This is not a case of commercial advertising nor an effort to hide commercial advertisement behind matter of public interest on the same sheet or handbill. Therefore the doctrine of *Valentine* v. *Chrestensen*, 62 S. Ct. 920. Here the parties have stipulated that the meeting was not commercial but solely for a charitable and Christian purpose and that the speech advertised could be heard free of charge. The undisputed evidence shows that the book mentioned incidentally with the advertisement of the meeting did not relate to a commercial matter and that the appellant did not

make any profit from a distribution of the book; but on the contrary when one is placed at the fixed contribution of twenty-five cents that appellant suffers a loss of money. Mentioning of the book on the leaflet was only incidental to the primary aim of the invitation, to wit, get the people of good will in Dallas to attend the assembly and hear the important talk "Peace. Can It Last?".

It is not contended that the appellant is a peddler or that she sold any thing. Every leaflet distributed by her was distributed free of charge. The undisputed evidence shows that she distributed the invitations peacefully, properly and did not offend or annoy anyone. She did not scatter or throw the invitations upon the streets or sidewalks but she only handed them to such persons who were willing to receive them upon the public streets.

The ordinance is not directed at any abuse of the privilege. The ordinance is void on its face. It prohibits a person from carrying or holding any advertisement matter. Being unconstitutional in part on its face it is void in its entirety. There is no rational connection between the means employed and the end aimed at by the ordinance. The police power relied upon by appellee has its limitations recognized by the court, when confronted with the barrier of constitutional protection of the rights of freedom of worship and of press. See Freund's "*The Police Power*" p. 133, s. 143. In *Schneider* v. *State*, supra, this court said: "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." In the case of *Herndon* v. *Lowry*, 301 U. S. 242, this court said:

> "The power of the state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined char-

acter must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution."

This court also pointed out in the case of *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153, that a "narrower scope for the presumption of constitutionality" prevails when legislation within specific prohibitions of the first ten amendments to the Constitution is before the court.

The ordinance does not expressly include within its terms "ministers of the gospel" but since it has been construed so as to apply to appellant's activity as an ordained minister of the gospel the right to preach and invite others to hear a "sermon" on the public streets by means of distribution of leaflets the provisions of the constitution guaranteeing freedom to worship Almighty God have likewise been abridged and violated.

It is very clear that the County Criminal Court stumbled into the "pit of error" at the hearing of this cause by not "performing the delicate and difficult task of appraising the substantiality of the reasons advanced" in support of the challenged legislation. That court did not give proper weight to the reasons advanced by appellant in support of the questions presented to it and blindly refused to follow applicable decisions of this court.

For the above reasons we submit that the County Criminal Court has committed fundamental error and ruled directly contrary to controlling decisions of this court, and has so far departed from the usual and customary course and path of constitutional law as to require the Supreme Court of the United States to exercise its power to correct the same in these proceedings.

Conclusion.

For sake of brevity, reference is here made to Petition for Appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error therein contained and hereby make the same a part hereof to show that susbtantial questions were presented to the County Criminal Court.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure of American courts as to call for this Court's power of supervision to halt the same.

Confidently and respectfully submitted,

(Signed) HAYDEN C. COVINGTON,
117 Adams Street,
Brooklyn, New York;
(Signed) TOM S. WILLIAMS,
Sterling Building,
Sulphur Springs, Texas,
Attorneys for Appellant.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 558

■

MRS. ELLA JAMISON, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

■

APPEAL FROM THE COUNTY CRIMINAL COURT OF DALLAS COUNTY, TEXAS

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
Attorney for Appellant

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Britannica, Encyclopædia, Vol. 20, "Pamphlets," pp. 659-660	25
Columbia Encyclopedia	25
Cooley, *Constitutional Limitations,* 8th ed., p. 968	19
Freund, *The Police Power,* pp. 133, 497	12, 32
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 558

■

MRS. ELLA JAMISON, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

■

APPEAL FROM THE COUNTY CRIMINAL COURT OF DALLAS COUNTY, TEXAS

APPELLANT'S BRIEF

Opinions Below

The court below did not render, write or file an opinion.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

County Criminal Court is Highest Court in which Decision can be Had

Article 53 of the Code of Criminal Procedure for Texas provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on *trial de novo*

on appeal from a Corporation or Justice Court where the fine assessed does not exceed the sum of $100. *Ragsdale* v. *State,* 120 Tex. Cr. R. 63, 47 S. W. 2d 278.

Therefore the court below is the highest court of the State of Texas in which a decision can be had in this cause. This makes possible a direct appeal to this court. *Schneider* v. *State,* 308 U. S. 147, 154; *Edwards* v. *California,* 314 U. S. 160, 171-172; *Kentucky* v. *Powers,* 201 U. S. 1, 37-39; *Grovey* v. *Townsend,* 295 U. S. 45.

The question of whether or not the judgment here appealed from is subject to further review in a higher court of Texas by petition for writ of habeas corpus is discussed under argument at pages 33-48, infra.

Timeliness

The judgment of the state court of last resort was rendered and entered of record on November 4, 1942. (R. 7) The judgment of the Dallas County Criminal Court is a final judgment. The petition for appeal was duly presented, filed and allowed within three months from the date of such final judgment.

The Statute

The legislation, constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Dallas, Texas, known as Article 140-7 of Ordinance No. 3251 reading as follows:

"It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement or sign of any description for the purpose of advertising, or to wear any costume for the purpose of attracting attention of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of the provisions of this article shall be deemed guilty

of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars."

The foregoing ordinance appears in the agreed statement of facts. R. 13-14.

Statement

The facts in this case are simple and undisputed. The evidence is in form of a stipulation of the parties. R. 8-33.

FACTS

Appellant, Mrs. Ella Jamison, is an ordained minister of Jehovah God in a covenant with Him to preach the gospel of God's kingdom, The Theocracy, by following in the footsteps of Christ Jesus, the faithful and true witness. She is associated with Oak Cliff Dallas company of Jehovah's witnesses in the performance of her ministerial activities. R. 9, 10, 11, 13-14.

While discharging her duties as an ordained minister by means of peacefully, orderly, and quietly distributing handbills and leaflets advertising a public sermon or discourse on the Bible prophecies concerning a topic of present-day interest, to wit, "Peace—Can It Last?" to be delivered by N. H. Knorr, president of the Watchtower Society on September 20, 1942, she was arrested and charged with a violation of the aforesaid ordinance by reason of handing such printed invitation to pedestrians whom she met while walking down the sidewalk along South Montclair Street in the City of Dallas, Texas. The complaint is in the record. R. 1.

Prior to September 20, 1942 the Dallas company of Jehovah's witnesses arranged to join a nation-wide assembly of Jehovah's witnesses to be held in more than 52 cities of the United States. Vickery Park was to be tied in with the "key city" Cleveland, Ohio, by telephone wire communication to carry the discourse advertised. The holding of this public meeting in Dallas was one of

the means employed by appellant and other of Jehovah's witnesses in preaching the gospel. The public in Dallas were invited to attend and listen. There were no charges for admission and no collection of any kind was solicited from those attending; but it was free of charge. The speech "Peace—Can It Last?" was also printed in booklet form and distributed free of charge to all who attended the assembly. This sermon related to a discussion of post-war conditions from the viewpoint of Bible prophecy on the subject. It shows that there are certain dangers in the coming peace conference which must be avoided in order to win the peace. If these dangers are not discovered by the people they cannot be avoided, the discourse points out. The discourse pointed out definitely the dangers to be avoided in order to win the peace. Also there was pointed out the explanation of Revelation 17:8 concerning the "beast that was, and is not, and yet is" and also clearly showed who will establish the enduring peace. The printed report of the speech "Peace—Can It Last?" was introduced in evidence and made a part of the record and identified as *Exhibit* 4. (R. 13, 14, 15-33) Examination of the contents of the exhibit shows that it was not on a commercial or selfish subject and that the convention assembly the public was invited to attend by appellant was not for a commercial or profit purpose.

The LEAFLET inviting the public to attend which was distributed by the appellant reads as follows:

[FRONT SIDE]

"Will Postwar Conditions Bring a New World? It is vital to know *now*. Hear PEACE—Can It Last? By N. H. KNORR, addressing the Nation-wide Assembly of Jehovah's witnesses simultaneously in more than 50 cities. Key Assembly, Cleveland, Ohio. SUNDAY, SEPTEMBER 20, 3 p.m., Vickery Park, Highway 75, Greenville Avenue, Dallas, Texas. All forward-looking persons of good-will are invited. *Admission Free. No Collection.*

[BACK SIDE]

THIS IS YOUR INVITATION to attend the Nation-wide Assembly of Jehovah's witnesses, particularly the public address, PEACE—Can It Last? By N. H. KNORR, President of the Watch Tower Society as announced overleaf. Also you will receive the uplifting hope of life in eternal youth in a new world, by reading CHILDREN, 384 pages, illustrated with unusual colored pictures, and bound in sky-blue cloth, stamped with gold and embossed; and HOPE, 64 pages, showing the hope for the dead and for the survivors in a righteous world. Both WATCHTOWER publications mailed to you postage prepaid on your contribution of 25c. Send to WATCHTOWER, 117 Adams St., Brooklyn, N. Y."

This LEAFLET is identified as *Exhibit* No. 1. R. 8, 9.

The undisputed evidence shows that the book and booklet described on the leaflet were not distributed by appellant because no one inquired; but that if one inquired of appellant she would have offered to deliver them to his home on the contribution of 25c which was less than actual cost of publication and distribution. (R. 12-13) The book and booklet relate to an explanation of God's kingdom and not to any commercial pursuit or purpose. The BOOK and BOOKLET are *exhibits* Nos. 3 and 3a. R. 12.

Appellant distributed the above described leaflet on the sidewalk in a quiet and orderly manner without being offensive tooanyone. She did not scatter or throw any of the leaflets upon the sidewalk as she proceeded along the street; but she handed them only to pedestrians whom she met who were willing to receive them. (R. 9-10) The appellant thus acted as a minister, believing this to be her duty to preach and that if she failed thus to preach the Gospel in this manner she would be everlastingly destroyed, as recorded in Ezekiel 3: 18, and Ezekiel 33: 8, 9. When first approached by the police officer he requested her to discontinue; but she refused and stated that she

stood in the same position with regard to the request as did the apostles of Jesus when requested to discontinue preaching, who said: "We ought to obey God rather than men." (Acts 5:29) "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." (Acts 4:19) When she thus refused to discontinue the police officer arrested her. R. 14.

History of Proceedings and Federal Questions Raised Below

CORPORATION COURT PROCEEDINGS

Appellant was charged by complaint filed in the Corporation Court of Dallas, Texas, with an alleged violation of the ordinance. (R. 1, 8) Among other things the complaint alleges: "carry, hold by hand, distribute, scatter and throw handbills as an advertising medium, in violation of and contrary to Art. 140-7 of Ord. 3251 of the Ordinances of the City of Dallas, Texas, upon the sidewalks of South Montclair Street." (R. 1, 8) Upon trial in the Corporation Court appellant urged a motion to quash on the grounds that the ordinance was unconstitutional. (R. 1, 2) The appellant was found guilty as charged in the Corporation Court and duly appealed by filing a bond. R. 36.

COUNTY CRIMINAL COURT PROCEEDINGS

The trial in the County Criminal Court was *de novo* and evidence was in the form of an agreed statement of facts. (R. 8-14.) In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was in excess of the police power of the state and that the means employed were unreasonable; because by its terms and as construed and applied it abridged the people's inherent rights of freedom of assembly, the use of the streets and sidewalks, freedom of speech and of the press

and freedom of communication, contrary to the first and fourteenth amendments to the United States Constitution. (R. 3-4) The timely motion was overruled. R. 4-5.

At the close of all the evidence appellant duly filed and urged her motion for a judgment of acquittal and for an order discharging appellant because (1) the ordinance was unreasonable and in excess of the police powers of the state and denied liberty and property in violation of the Fourteenth Amendment to the United States Constitution; (2) the ordinance was void on its face because it abridges the rights of freedoms of assembly, speech, press and of the use of the public sidewalks contrary to the First and Fourteenth Amendments to the United States Constitution; and (3) the ordinance was void as construed and applied to the circumstances of appellant's activity because it abridges her rights of freedoms of assembly, speech, press, the lawful use of the public sidewalks and her right of freedom to worship Almighty God according to the dictates of her conscience contrary to the First and Fourteenth Amendments to the United States Constitution. (R. 5-6) The motion was overruled and appellant excepted. (R. 6-7) A final judgment convicting the appellant was rendered and entered and thereby appellant was fined $5 and costs. (R. 7) A motion for new trial was timely filed and amended by leave of court in which motion the ordinance was attacked on the same grounds as above. (R. 33-34) The motion for new trial was overruled and appellant excepted. R. 34-35.

The County Criminal Court, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied; and held that the First and Fourteenth Amendments had not been violated in applying the ordinance to the appellant's activities. R. 1-3, 3-7, 33-35.

In the petition for appeal and the assignments of error duly filed, appellant complains of the judgment of the

County Criminal Court of Dallas County, Texas, for and on account of each of the grounds set forth in her motions to quash and for judgment of acquittal filed in said court. R. 35-38.

Specification of Errors to Be Urged

The County Criminal Court of Dallas County, Texas, committed reversible error in overruling the aforesaid motions and in rendering judgment because the court should have held that—

(1) The ordinance in question, both on its face and as construed and applied to appellant, is violative of the Federal Constitution in that it abridges appellant's freedoms of assembly and use of the public streets and sidewalks, of speech, of press and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The ordinance in question is void on its face and as construed because by its terms it is in excess of the police power of the State of Texas and the City of Dallas and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor to the police powers of the state, and by reason thereof it violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

Points for Argument

ONE

This court should hold that the ordinance in question as construed and applied abridges and prohibits exercise of appellant's fundamental personal right of freedom to worship Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

This court should hold that the ordinance by its terms and as construed and applied expressly abridges and prohibits exercise by appellant of her fundamental personal rights of freedom of assembly, of speech, and of the press, contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

This court should hold that the ordinance is void on its face because it provides for unreasonable and arbitrary means which have no reasonable relation to the ends aimed for nor to the police powers of the state, contrary to the Fourteenth Amendment to the United States Constitution.

FOUR

This court should hold that under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.

FIVE

This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.

Summary of Argument

The stipulation is that appellant is a minister of the gospel of Jehovah God and that the distribution of the folder to those who would receive it as she walked along South Montclair Street sidewalks was a necessary part of her preaching of the gospel. She was inviting the public to attend the public meeting to hear free of charge the Bible discourse on the subject "Peace—Can It Last?" The exercise of this preaching right by her is secured against abridgment by the First and Fourteenth Amendments. *Cantwell* v. *Connecticut*, 310 U.S. 296. There is no showing or claim that the activity or the sermon advertised by her was a violation of the law of morals or endangered the peace and safety of the nation. It is stipulated that she did not throw or scatter the printed invitations upon the streets or sidewalks but that she handed them to pedestrians whom she met. There is no showing or claim that any pedestrian threw such folders upon the streets; but if they did appellant would not be responsible therefor. The ordinance has been applied to facts which make it *unconstitutional* to the extent that it has been construed to cover worshiping or preaching activity of appellant. *Cantwell* v. *Connecticut*, supra; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545.

The ordinance is unconstitutional because as construed it abridges and prohibits exercise of the fundamental personal rights of freedoms of assembly, speech and press. The holding of the court below sustaining the application

of the ordinance conflicts directly with *Schneider* v. *State*, 308 U.S. 147; *Hague* v. *C.I.O.*, 307 U.S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; and *Near* v. *Minnesota*, 283 U.S. 697, 707-716. The ordinance is *prohibitory* in its terms and does not appear to be regulatory. There is no way that one can exercise such fundamental rights on the streets of Dallas without violating the ordinance.

The doctrine of *Valentine* v. *Chrestensen*, 316 U. S. 52, does not apply to printed information and opinion offered nor can it be relied upon because the book incidentally mentioned and advertised on the written invitation did not relate to a commercial venture. Moreover she did not use the *invitation* as a subterfuge to hide commercialism and the appellant did not profit by a distribution of the book or by the contribution received. The costs, the items accompanying the book, far exceeded the amount contributed. If it is contended that *Jones* v. *Opelika*, 316 U.S. 584, erroneous precept of this court, permits invoking the doctrine of *Valentine* v. *Chrestensen*, then we submit that the *Valentine* case is unsound and should be overruled because denying liberty of the press to those engaged in commercial activities, thereby discriminating against *commerce* in favor of *politics*. Commerce has the same right to freedom of the press as does labor, a branch of *commerce*, and politics and religion recognized by this court to be covered by the protecting shield of the First and Fourteenth Amendments.

Insofar as the ordinance on its face prohibits the holding or carrying of any folder or circular or advertising matter upon the streets of Dallas the same is arbitrary, unreasonable and in excess of the police power. It is void because the means employed have no reasonable relation to the ends aimed for by the ordinance. No reasonable person can say that any of the interests which the state is permitted to protect can possibly be affected even remotely by the carrying of a sign, advertisement or placard

of any kind. If such a law could be sustained, then there is nothing to prevent the state from taking similar unreasonable steps over the person by such as prohibiting a woman from wearing an orange-colored hat on St. Patrick's Day, or passing a law requiring any other such unreasonable thing. In this respect the ordinance is invalid, as was held in *Weaver* v. *Palmer Bros. Co.*, 270 U.S. 402; *Dobbins* v. *Los Angeles*, 195 U. S. 223; *Panhandle Eastern Pipe Line Co.* v. *State Highway Commission*, 294 U.S. 613, 622; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 204. See Freund's *The Police Power*, page 133.

With respect to the right to full review of the judgment in a higher court of Texas it is our contention that if the case of *Ex parte Daisy Largent*, 162 S.W. 2d 419, is permitted to stand, at most only a partial review is allowed by habeas corpus proceedings. In that opinion the court limits the inquiry to whether or not the ordinance is void on its face and refuses to consider the more vital question of whether or not it is unconstitutional as construed and applied to the particular facts. Therefore there is not allowed a full review of the judgment in the courts of Texas.

Moreover, it is not material to the jurisdiction of this court that there is an opportunity for a full review by habeas corpus because under the Judicial Code the appeal is allowed as a matter of right where the judgment is rendered by the court of *last* resort. This court does not have discretionary power to require a citizen who has a right to appeal to the court to first apply for some additional remedy in the state courts where no further direct appeal lies to a higher court as in this case. The rule allowing this requirement in petitions for writ of certiorari does not apply in *appeal cases* under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)].

ARGUMENT

ONE

This court should hold that the ordinance in question as construed and applied abridges and prohibits exercise of appellant's fundamental personal right of freedom to worship Almighty God Jehovah, contrary to the First and Fourteenth Amendments to the United States Constitution.

Freedom to worship Almighty God Jehovah according to dictates of one's own conscience and as commanded by the Creator in His written Word is one of the rights secured by the First Amendment made effective against the states by the injunctions contained in the Fourteenth Amendment. *Cantwell* v. *Connecticut*, 310 U.S. 296.

The stipulation is that appellant was and is an ordained minister of Jehovah God in a covenant with Jehovah to act as His witness concerning His Kingdom of Righteousness. That appellant is associated with other ambassadors of The Kingdom in Dallas, Texas. That in addition to preaching from house to house in the city appellant and other of Jehovah's witnesses arranged for public lecture to be delivered on the Bible subject "Peace—Can It Last?" It is agreed that appellant believed it was her duty as a minister of this gospel to advertise this important Bible talk by means of distribution of the invitations. It was stipulated that this was her method of preaching the gospel.

Preaching of the gospel in this manner is not for the private, personal benefit of the individual so preaching or the benevolent corporation used by Jehovah's witnesses to carry on their activity in an organized and orderly way. The purpose, aim and effect of appellant's distribution of the written invitations was only to enlighten and benefit persons willing to attend the public gathering and receive the benefit of hearing the revealed Word of Jehovah God.

Since some of the members of this court, in the *Jones* v. *Opelika*, supra, have taken the view that the activity of Jehovah's witnesses is not "religious worship" or takes on more of a commercial aspect, and since the court has held in the *Valentine* v. *Chrestensen* case that advertising of commercial ventures can be prohibited, it is necessary to discuss the nature of *the thing* advertised on the written folder or invitation which appellant distributed, to show that neither the book nor the advertised meeting can be condemned as commercial.

It should be noticed that the leaflet contained the invitation printed on both sides. The primary aim of the leaflet was to invite the people to attend the public meeting. Mentioning of the book "Children" was only incidental. Therefore it cannot be claimed, as was found in the *Chrestensen* case, that the purpose of the invitation was a subterfuge to hide the advertisement of the book.

Moreover, the *Chrestensen* decision is not applicable, assuming that the leaflet was advertising the book, because the stipulation and the book show that it related to and contained information and opinion in the public interest the distribution of which is protected by the Constitution against abridgment.

Now we turn to a discussion of whether or not the lecture "PEACE—Can It Last?" related to a commercial matter so as to make the invitation commercial advertising. The setting for the discourse was not commercial. The invitation said and the parties stipulated that there was to be and was no collection of money contribution and no admission charge. Thus it was admittedly charitable, philanthropic and benevolent. The subject related to a discussion of post-war conditions, which is a matter of public interest, convenience and necessity.

The discourse as actually delivered was printed and made a part of the stipulation. It was based primarily upon a disclosure of the meaning and application of the 17th chapter of Revelation and an insight into future events as

they relate to current happenings in the war now being fought by world powers for *world domination*. To show that it does not relate to a commercial venture but only to the perfect Word of God, the Bible, this summary thereof is given.

SUMMARY OF LECTURE

The speech "PEACE—Can It Last?" is based upon an understanding of the 17th chapter of the Bible book of *Revelation* concerning the beast that "was, and is not, and shall be present" and the harlot spoken of in connection with this beast. The *beast* pictures the Combine of nations (similar in form to the League of Nations that "was" and now "is not") that shall arise from the present-day world powers' fighting for world domination. The *harlot* pictures the giant religious organization allied with totalitarian nations.

History is traced since the Reformation, showing progress of humanity under the liberal democratic protestant governments maintaining a separation of Church and State. An abridged review is given of the revengeful conspiracy of hatred by the *alliance* from which the liberal democratic governments broke away. Plans of present-day totalitarian, absolute, autocratic governments and their religious partner to destroy the liberal governments and their constitutions are plainly portrayed.

The Roman Catholic Hierarchy, distinguished from the honest Catholic population, claims the right to world domination. It is pointed out that if the dictators do not win the war over the democracies *she* will subtlely attempt to obtain the "axis" victory through an unexpected and negotiated peace so as to *sand-bag* and *sabotage* the realization of the victory aims of the democratic nations. The Scriptures clearly declare that no lasting peace can come through such negotiated peace but that the non-catholic democracies will fall for the scheme and help establish the "new order" in the form of a resurrected league of

nations in which the Roman Catholic Hierarchy will act as arbiter and dominate all countries for "an hour" or short season, with full authority and control such as *she* enjoyed during the Holy Roman Empire of the German Nation, the strangle-hold of which was broken at Westphalia.

It is made plain that with the complete world-wide establishment of this combine in every nation the things held dear to all *liberty-lovers*, namely, freedom of speech, press and worship for those who do not agree with the *new order* will be denied and in place of the compacts of liberty will be established concordats of oppression and tyranny, in which the climax will be reached by a *world-wide* violent opposition against God's kingdom and His witnesses. When these plans are completely executed they will cry *Peace and Safety!* Then what will happen? The talk shows that sudden and unexpected destruction will come upon *her*, and all other "recognized" religions, as she gets bucked off the back of the beast. This shows conclusively that the "cry" that Jehovah's witnesses are attempting to destroy religion will be disproved. The statement of the speaker is apropos, to wit, "Will the religionists and all other persecutors of Jehovah's witnesses take note, please, that it is not Jehovah's faithful witnesses that will thus violently break up 'organized religion'. The world powers will do it, the very ones with whom religion is committing spiritual fornication by making common cause with them against Jehovah's Theocracy and those who bear witness to it.—Ezekiel 16: 28-43; 23: 17-31." R. 30.

This climax will be followed immediately by the complete everlasting destruction of all of Satan's organization and beastly rule to be succeeded by full expansion throughout the earth of God's kingdom, as foretold in Daniel 2: 44, which will bring lasting and eternal peace under the King Father, Christ Jesus the "Prince of Peace". As to this peace the speaker said: "Concerning the freedom from war, freedom from want, and freedom from fear on the

part of those who survive Armageddon and enter the New World under The Theocracy it is written: 'Nation shall not lift up a sword against nation, neither shall they learn war any more. But they shall sit every man under his vine and under his fig tree; and none shall make them afraid: for the mouth of the LORD [Jehovah] of hosts hath spoken it.'—Micah 4: 3, 4." R. 33.

[END OF SUMMARY OF LECTURE]

From the foregoing it is plain, then, that the advertised meeting and lecture to which the public were invited did not constitute a commercial venture of the sort condemned in the *Chrestensen* case; but is that sort of activity which is protected by the Constitution.

Appellee objects to contents of the speech because it makes a scriptural exposé of the religious organization at Vatican City, saying that it is the ultimate in intolerance. Appellee would also charge the signers of the Texas Declaration of Independence with the same intolerance and abridge the right of the citizens of Texas to advertise upon the streets the contents of such Declaration, or to tell others how it could be obtained. Houston, Maverick, Fisher and other signers condemned the same religious organization as being the usual instrument of tyrants and the eternal enemy of civil liberty. See Vernon's Texas Statutes, Centennial Edition.

It is not within the power of the state or this court to say that the activity of appellant in going upon the public sidewalks to advertise the public meeting was not a proper way to worship Almighty God. If the courts were to enter upon the domain of what are proper or genuine "religious" beliefs and practices and *decide* whether certain acts are "religious", then indeed liberty and freedom of worship would vanish. The safety of the citizen on these questions would no longer depend upon the Constitution but upon the *religious* complexion of the court.

Incompetency of the courts to judge such matters, as was attempted in the *Jones* v. *Opelika* cases was declared early in the history of this republic by Thomas Jefferson in the *Virginia Statute for Religious Freedom* (Section 34 of Virginia Code), cited with approval in *Reynolds* v. *United States,* 98 U.S. 145, 162.

The matter of determining whether a particular belief or practice is reasonable or unreasonable is a matter for the individual conscience. See *State of Kansas* v. *Smith,* 155 Kans. 588, 127 P. 2d 518. Judge Parker stated this matter well in *Barnette et al.* v. *West Virginia State Board of Education,* 47 F. Supp. 251, where he said:

> "Courts may decide whether the public welfare is jeopardized by acts done or omitted because of religious belief; but they have nothing to do with determining the reasonableness of the belief. That is necessarily a matter of individual conscience. There is hardly a group of religious people to be found in the world who do not hold to beliefs and regard practices as important which seem utterly foolish and lacking in reason to others equally wise and religious; and for the courts to attempt to distinguish between religious beliefs or practices on the ground that they are reasonable or unreasonable would be for them to embark upon a hopeless undertaking and one which would inevitably result in the end of religious liberty."[1]

In the *Cantwell* opinion of this Court (310 U.S. 296) the activity of Jehovah's witnesses was recognized as within the definition of "religious activity" protected by the Constitution.

Since it is conclusively presumed that the activity of appellant is acts of worship of Almighty God there can

[1] Cf. *Jones* v. *Opelika,* supra, where Mr. Justice Reed said: "If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented."

be no question that her freedom to worship secured by the Constitution against abridgment has been wrongfully infringed.

Every person who is in a covenant with Jehovah is duty-bound to obey the law of Almighty God which requires that he follow in the footsteps of His Son, Christ Jesus, by giving public witness to the name and word of Jehovah. (Psalm 40:8; 1 Peter 2:9, 21) Jesus Christ said: "Go ye into all the world and preach the gospel to every creature." (Mark 16:15) It is written that He taught publicly in the market places, upon the streets and from house to house, as did also His apostles. (Mark 6:6; Luke 8:1; 13:26; Acts 5:42; 20:20; Proverbs 1:20, 21) A minister of the gospel who follows in the footsteps of Christ Jesus must be a witness for Jehovah, the Almighty God.—Isaiah 43:10-12; 44:8.

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14, Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His written judgments against Christendom, 'publicly and throughout every city until the cities are desolate'!—Isaiah 6:1-11.

God's law and the requirements of the covenant into which He has taken His ministers, such as appellant, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by ill-advised men. (Cooley, *Constitutional Limitations*, 8th ed., p. 968) When confronted with inconsistent demands

of the two, Jehovah's servants adopt the answer He provided, to wit, "We ought to obey God rather than men." (Acts 5:29) Appellant desires life which comes only from Jehovah God to those only who are obedient to His perfect law. (Psalm 36:9; John 17:3). The law of Jehovah is perfect, the statutes of Jehovah are right . . . the commandment of Jehovah is pure." (Psalm 19:7, 8) Jehovah's witnesses are ambassadors for Jehovah's Theocratic Government under Christ Jesus. (2 Corinthians 5:20; Ephesians 6:20; Jeremiah 49:14; Obadiah 1) Hence the City of Dallas does not and cannot have jurisdiction to intervene by stretching an inapplicable law so as to encumber, regulate and interfere with this commission. Appellant could not yield to the demand of the police under the law because such would make her a covenant-breaker worthy of death. (Romans 1:31, 32) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked and all who forget Him He will destroy. (Psalm 145:20) Jehovah God keeps all His promises.—Isaiah 46:11.

The supersusceptibilities of some persons in the City of Dallas, demonstrating a very intolerant attitude toward others with whom they do not agree, is the basis of the City's contention ruling every person off the streets who does not agree with the majority rule of the city. This is well demonstrated in the quotation from the "Motion to Dismiss or Affirm Appeal" filed in this cause, to wit:

> "This Court has many times discussed the question of freedom of speech and freedom of religion but has never taken the occasion to consider the reverse of the situation, i. e., the rights of other individuals to be free *from* the speech and religion of persons like this appellant. The public is entitled to be free from harassment and annoyance from attempts by people like appellant to force their speech and religion upon them."

This statement is contrary to the stipulation that the appellant was orderly, quiet, did not scatter or throw the handbills about and *did not offend anyone.* (R. 9-10) There is no abuse of the privilege shown in the record and there can be none claimed by any reasonable person. Furthermore the ordinance is not directed at the abuse of the privilege.

Appellee argues that the state has absolute ownership and control of the streets of Texas and cites *Davis* v. *Commonwealth,* 167 U. S. 44. The doctrine of absolute ownership and control, so as to *legislate* off the street persons who are using the same for purpose of dissemination of information and opinion, was expressly rejected in *Hague* v. *C. I. O.,* 307 U. S. 496, where it was expressly held that the *Davis* case did not apply to use such as made in this case. There, speaking by Mr. Justice Roberts, this Court said:

> "We have no occasion to determine whether, on the facts disclosed, the *Davis Case* was rightly decided, but WE CANNOT AGREE THAT IT RULES THE INSTANT CASE. Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been USED FOR PURPOSES OF ASSEMBLY, COMMUNICATING THOUGHTS BETWEEN CITIZENS, and DISCUSSING PUBLIC QUESTIONS. Such use of the streets and public places has, from ancient times, been a part of the PRIVILEGES, IMMUNITIES, RIGHTS, and LIBERTIES OF CITIZENS. The privilege of a citizen of the United States to use the streets and parks for COMMUNICATING VIEWS ON NATIONAL QUESTIONS may be regulated [not *prohibited*] in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order;

but IT MUST NOT, IN THE GUISE OF REGULATION, BE ABRIDGED OR DENIED." [Capitalization and bracketed words added]

The authorities relied upon by appellee holding the absolute right in the state to prevent or control the use of the streets for purposes of operating a business such as common carriers, taxicabs, peddlers of ordinary articles of merchandise, etc., do not apply here because in those cases there is no specific constitutional guarantee of the right exercised, as *exists* in this case.

It is argued extensively that the city and state are forced to furnish a forum or place of worship to appellant contrary to the Constitution by permitting her to exercise her right by distributing the leaflet, and that if appellant is permitted then all others could make use of the streets for religious services such as holding communion, mass, etc., and usurp the power of the city to control its streets. Appellant does not claim the right to move a "church house" into Commerce Street or Montclair Street in Dallas. "Freedom of press" would not permit one to set up a printing-press on the sidewalk along Akard Street, nor a giant newsstand on the sidewalk along Main Street in Dallas. Appellant recognizes the right of the city to prevent the appropriation of the streets to *private* use to the exclusion of passage and travel by others. Such abuses can be punished and prohibited, and regulation to prevent such results can be rightly enacted.

Appellant was not abusing any right or privilege. In actual *use* of the sidewalk, she was not doing more than the police officer who arrested her. She was not using nearly as much space of the sidewalk as the officer because she is about half the size of the officer. All that she was doing was walking down the street handing out handbills. It is not contended that she blocked traffic or forced anyone off the streets or that the use of the streets and sidewalks by others was interfered with. Appellee makes a mountain

out of a mole hill; and in an effort to persuade the court that appellant was worshiping on the streets to the exclusion of the religions of Dallas, appellee strains at the gnat and swallows the camel!

Appellant does not have or claim any higher use of the streets than the clergy of Dallas. It must be conceded that the clergy of the protestant denominations and the priests of the Roman Catholic hierarchy would have EQUAL RIGHT to advertise a religious meeting or gathering to hear a sermon, attend mass or communion, or for any other proper purpose. No one would have the hardihood to contend that such clergy, when so using Dallas streets, would be moving their edifices into those streets to the exclusion of travelers and vehicles because they handed out invitations to the public, but appellee makes that sort of argument here.

With these sound basic principles in mind, the respective rights of the state and the citizen become clear. The people themselves are owners of the forum—living and *exercising* their rights not by sufferance of "the state" but by reason of their inalienable right to live and *act* as free men.

In America, as distinguished from the foreign *authoritarian* form of government, THE PEOPLE comprise the source or fountain of all law and authority of "the state". In America "the state" is only a creation of the whole people and exists by *their* sufferance. The delegated authority of the national and state governments of this Union is limited by their respective constitutions. The people, being entirely sovereign, are not dependent on "the state" to grant, allow or furnish them with a *forum* in which to exercise the rights of free men. On the contrary, "the state" is the vehicle designed by the people to insure to ALL, *including* minorities and individuals, free enjoyment of rights which the founding fathers of the new union of states considered to be fundamental, inalienable, inherent —possessed equally by all, rich and poor, bond and free, black and white, regardless of creed or native citizenship.

To make the incredible assertion, as does appellee, that the state's "propietary rights in the streets are no less than those of a private owner" of property, is to attack directly the most basic principle of "government by the people"—to attack in the manner 'dreamed' of by sympathizers with dictatorial or totalitarian principles of government.

Appellee contends that the state has *absolute control* over streets belonging to the people. This compares well with "judicial" pronouncements of Adolph Hitler, e. g.,

> "The state is the great, powerful weapon to be used . . . in the battle, the eternal battle, for life [world domination], a weapon to which everyone must submit, because it expresses a common will."—*Mein Kampf*, "The State," Chapter XIV.

We submit that under the American Constitution the people are *sovereign*, and in the realm of civil liberties "the state" is shorn of all authority except "police power" to regulate, which denies "the state" any authority to grant "indulgences" or "absolution" to any "sect", as appellee wrongly claims it is ASKED to do.

The difficulty with appellee is that it has a narrow-gauge mental view of what constitutes *worship* by confining it to *traditional* and orthodox methods of preaching from a pulpit in an edifice. Appellee would rule out completely the older Christlike and apostolic way of preaching which is by going upon the streets, the public places, the market places, and in the highways and by ways. The court cannot restrict the *mode of worship* as contended for by appellee without establishing a state religion, discriminating in favor of "traditional" and orthodox methods and overruling prior decisions of this court protecting against such encroachment upon the method Jehovah's witnesses employ.

Appellee contends that acceptance of money or the offer to accept money, even though no profit is made,

constitutes a "sale" and "offer to sell" and thus makes the activity "commercial". Appellee uses as the basis for this contention this court's ruling in *Jones* v. *Opelika*, supra. Stripped of all its sophistry, the argument is that freedom of press and freedom of worship mean that one must *give* literature away free of any money contribution or help; that if money tendered is received, the constitutional shield is dynamited to pieces and the state can rush in and legislate to prohibit, censor and regulate in any form which the legislative judgment may direct. No more dangerous doctrine has ever been invented by the mind of man than that the provisions of the Constitution can be suspended when it is shown that money is received or that profit is made. Such a doctrine means the end of constitutional liberty and makes the Bill of Rights a scrap of paper. Every student of American history knows that the pamphlets of Thomas Paine were not given away free of charge. See *Columbia Encyclopedia*, "Pamphlet"; *Encyclopedia Britannica*, Vol. 20, Pamphlets, pp. 659-660. *Commonwealth* v. *Reid*, 144 Pa. S. C. 569, 20 A. 2d 841.

If this court really did what the appellee says it did in *Jones v. Opelika*, supra; that is, LIMIT the freedoms to those financially able and wealthy enough to operate without accepting money contributions, then we submit that this court should hasten to make correction by setting aside its *Jones* v. *Opelika* decision with the judgment appealed here from the court below.

The construction and application given the ordinance prohibits absolutely the worship and service of Almighty God on the sidewalks of the city, in an orderly and proper manner, and is therefore unconstitutional and void to the extent that it has been applied to the admitted acts of worship performed by appellant.

TWO

This court should hold that the ordinance by its terms and as construed and applied expressly abridges and prohibits exercise by appellant of her fundamental personal rights of freedom of assembly, of speech, and of the press, contrary to the First and Fourteenth Amendments to the United States Constitution.

It is stipulated that the appellant was exercising her fundamental rights of freedoms of assembly, speech and press, in distributing the written invitation and leaflet.

It is too well settled to require argument that these *fundamental personal rights* are guaranteed by the First Amendment and secured against abridgment by the state through passage of the Fourteenth Amendment. *Grosjean* v. *American Press Co.*, 297 U.S. 233; *Near* v. *Minnesota*, 283 U.S. 697; *Lovell* v. *Griffin*, 303 U.S. 444; *Schneider* v. *State*, 308 U.S. 147; *Cantwell* v. *Connecticut*, supra.

Even under the doctrine of *Jones* v. *Opelika*, supra, the ordinance is admittedly unconstitutional and void because it is absolutely prohibitory and is not regulatory. In the *Jones* v. *Opelika* opinion the majority said: "Ordinances absolutely prohibiting the exercise of this right to disseminate information are, *a fortiori*, invalid." We rely upon *Hague* v. *C.I.O.*, 307 U.S. 496, 501 and 518, as authority here. There this Court held unconstitutional the Jersey City ordinance which forbade any person in the city "to distribute or cause to be distributed or strewn about any street or public place any newspaper, paper, periodical, book, magazine, circular, card, or pamphlet." It was so declared because the ordinance was an abridgment of freedoms of assembly, speech and press.

The Dallas ordinance prohibits a person from carrying or holding any advertisement matter. It prohibits scatter-

ing of leaflets, which the courts below construe to mean the distribution thereof to others.

The ordinance is void under the decision of this court in *Schneider* v. *State*, 308 U.S. 147, where the Los Angeles, Milwaukee and Worcester ordinances containing identical provisions were declared to be in violation of the 1st and 14th amendments because abridging the rights of freedoms of speech and press. It is noticed that in the Los Angeles case the hand-bill had a commercial taint, which cannot rightly be claimed concerning the invitation here. In that case Mr. Justice Roberts said:

> "On the hand-bill were the words 'Admission 25c and 50c'. The Superior Court adverted to these and said: 'Whatever traffic in ideas the Friends Lincoln Brigade may have planned for the meeting, the cards themselves seem to fall within the classification of commercial advertising rather than the expression of one's views.'"

There this Court also declared that the streets were the natural and proper places for the dissemination of information and opinion, and held that one cannot be denied the exercise of this right on the theory that it would be more convenient to the *majority* to have the rights exercised in some other place. Further the court said:

> "The motive of the legislation under attack in Numbers 13, 18 and 29 is held by the courts below to be the prevention of littering of the streets and, although the alleged offenders were not charged with themselves scattering paper in the streets, their convictions were sustained upon the theory that distribution by them encouraged or resulted in such littering. *We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person*

rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets." [Italics added]

The holding of the court below conflicts directly with *Thornhill* v. *Alabama*, 310 U.S. 88, and *Carlson* v. *California*, 310 U.S. 106, where similar prohibitory legislation was declared unconstitutional. See also *Near* v. *Minnesota*, 283 U.S. 697.

Because the ordinance affects distribution and not printing does not save it. Distribution is the very life of the press. Without distribution printing is of little or no value. In the case of *Lovell* v. *Griffin*, 303 U.S. 444, it is said:

> "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U.S. 727, 733."

Of and concerning this character of ordinance in *Zimmermann* v. *London*, 38 F. Supp. 582, it was said: "In the case now before this Court, the ordinance imposes no censorship upon the 'free and unhampered distribution of pamphlets'; it imposes what amounts to a virtual prohibition upon such distribution."

The case of *Valentine* v. *Chrestensen*, supra, is not

applicable here. The meeting here publicized was not for a commercial purpose, as was the purpose advertised in that case, but solely for a charitable and Christian purpose. The meeting advertised here was free of charge and no admission charge was made but in the *Chrestensen* case there was. The book "Children" was mentioned only incidentally with the invitation to attend the meeting. The book was of the nature protected by freedom of press guarantee in that it related to explanation of Bible prophecies and contained Bible information concerning the obligation of parents to bring their children up in the nurture and admonition of the Lord. This is therefore a matter of public interest, convenience and necessity. It is not claimed that appellant sold any such book; however, it was stipulated that appellant did not undertake to distribute the book but that if inquiry were made she would distribute the book to any desiring a copy. It is stipulated that she gave with the book a booklet "Hope" and three study courses to aid in the understanding of the book and its proper use with the Bible. The parties agree that the cost of the book, booklet and study courses exceeds the amount contributed by a recipient, to wit, 25c. Each handbill or invitation was distributed without charge. Here is not found the "commercial advertising" subterfuge that this court found in the *Chrestensen* case. In that case this court announced the principles relied upon here by appellant. In that case this court said: "This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares."

The surprising attitude announced on June 8, 1942, by the majority of this court in the *Opelika* cases (316 U.S. 585-600) makes it necessary to discuss further the *Chrestensen* case. As ground for denying constitutional rights in

the *Opelika* cases this court says: "It is enough that money is earned by the sale of articles." On the basis of those *Opelika* cases, it may be argued that this appellant's willingness to distribute *the book* if a request were made, and the fact that she would accept the contribution might justify application of the *Chrestensen* case here.

If the *Chrestensen* doctrine be extended to apply here then, logically, equitably, it must be extended to embrace *every publication* ("vehicle of information and opinion"[2]) that consists at once of *news* and *commercial advertising*. Such 'vehicles' include many well known periodicals daily obtainable on streets throughout this land from peripatetic youths: *Saturday Evening Post, Collier's, Liberty,* etc.

Then freedom of the press means nothing. Then "freedom of press" would mean the freedom exists so long as you are wealthy enough to afford to give away literature without charge, but "freedom" would be denied to those poor enough to need money wherewith to carry on. Such a doctrine would mean the end of *free* press, and every newspaper and periodical in this country could be forced to stop its presses under such a doctrine.

It is a known fact that the greater source of revenue for the newspapers is *commercial advertising* and many *papers* are noticed to contain much more advertising of a commercial nature than news or information, such as the New York *Daily News,* the Los Angeles *Times,* the Boston *Post,* and the Dallas *News.*

The only difference between the condemned LEAFLET in the *Chrestensen* case and each copy of any issue of any large metropolitan newspaper is the size and number of sheets delivered by the ultimate distributor, whether he be an ambulating vendor or the custodian of a newsstand. Often some such *news*papers have as much as seventy (70%) percent of the entire space devoted to advertisement of a commercial nature. Rural newspapers are no exception to this statement.

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[2] *Lovell* v. *Griffin,* 303 U. S. 444, 452.

Advertising of a commercial nature is the chief means of revenue for the newspapers. If the *Chrestensen* doctrine be sustained for long it would mean the end of commercial newspapers.[3] We cannot understand how this court can be so clear as it states itself to be with respect to "purely commercial advertising" when it has so strongly supported the protection of advertising of labor matters and labor controversies which constitute only one element of "commerce". In the one instance "services" are SOLD (by the laborers) while in the other instance, such as in the *Chrestensen* case, other material values are SOLD, or in the case of the merchant it is goods that are to be SOLD. *Politics, commerce* and *religion* stand on the same level under the First Amendment. While we think the *Chrestensen* case is inapplicable here, it is thought appropriate here to mention this apparent oversight in that case.

The police power relied upon in sustaining the New York City ordinance in that case does not authorize the step here because here both the matter advertised and the meeting to which the public were invited did relate to public information and opinion of vital importance. Therefore the Dallas ordinance is confronted here with the barrier of the constitutional protection of the rights of freedom of worship and of the press. In *Schneider* v. *State,* supra, Mr. Justice Roberts said: "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." In *Herndon* v. *Lowry,* 301 U.S. 242, this court said: "The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principles of the Constitution."

[3] Cf. *Grosjean* v. *American Press Co.*, 297 U.S. 233, holding unconstitutional a tax on commercial advertisement in newspapers.

This court also held in the case of *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-153, that a "narrower scope for the presumption of constitutionality" prevails when legislation within specific prohibitions of the first ten amendments to the Constitution is before the court.

Even though it may be said that the *Chrestensen* case is unsound and does not properly state the law, it is nevertheless not controlling here because the activity here is admittedly the exercise of fundamental personal rights within the protecting shield of the 1st and 14th Amendments.

THREE

This court should hold that the ordinance is void on its face because it provides for unreasonable and arbitrary means which have no reasonable relation to the ends aimed for nor to the police powers of the state, contrary to the Fourteenth Amendment to the United States Constitution.

Even when applied to commercial advertisement of every kind and character the ordinance is unconstitutional because it is void on its face. It is unlawful interference with and prohibition of the exercise of any lawful business conducted in a proper manner. The law does not purport to be regulatory. It is not possible for one to engage in such activity at any time or any place within the city. This provision is unreasonable and arbitrary and has no reasonable relation to the ends aimed for by the ordinance. It violates the principles announced in Freund's *The Police Power*, pages 133 and 497. See also *Weaver* v. *Palmer Bros. Co.*, 270 U.S. 402; *Smith* v. *Texas*, 233 U.S. 630; *Dobbins* v. *Los Angeles*, 195 U.S. 223; *Jacobson* v. *Massachusetts*, 197 U.S. 11, 25; *Eubank* v. *Richmond*, 226 U.S. 137; *Panhandle E. Pipe Line Co.* v. *State H'way Com'n*, 294 U.S. 613, 622.

In *Jay Burns Baking Co.* v. *Bryan*, 264 U.S. 504, this court said: "A state may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them." See also 3 *McQuillen on Municipal Corporations*, 2d ed., p. 122; *Lawton* v. *Steele*, 152 U.S. 133, 137; *Mugler* v. *Kansas*, 123 U.S. 623.

It should be kept in mind that what is here prohibited is "press activity" and not commercial business of selling and peddling ordinary articles of merchandise upon the streets. In its broad scope all sorts of advertising is included. The ordinance is unreasonable and does not impose fair means of regulation but absolutely prohibits the exercise of this right which is not within the scope of the police powers of the state.

It is submitted that the ordinance is void on its face and therefore unconstitutional.

FOUR

This court should hold that under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.

At the threshold to consideration of the question of the Court's jurisdiction, which some opine depends upon whether or not the judgment of the court below is subject to further review in a higher court of Texas, this Court is confronted with the proposition that this case comes here by *appeal*, as a matter of right, and not by *petition for writ of certiorari*, the granting of which is discretionary with this Court. In *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert* (1917) 245 U. S. 162, 165, this Court said that

the difference between writ of error, now appeal, provided in the Judicial Code, and *certiorari* "lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of sound discretion."

Such requirement cannot be insisted upon in the case at bar because—

(1) Appellant is here as a matter of right from the highest court of Texas in which a decision can be had; and

(2) We do not have right of full review of the judgment but only a partial review.

This APPEAL satisfies the requirements of Section 237 (a) of the Judicial Code, 28 U. S. C. A. 344, so as to confer jurisdiction upon this Court to consider the substantial *federal questions* here presented.

By Article 53 of the Texas Code of Criminal Procedure the judgment of the court below is made final in a case of this kind and no further right of appeal to a higher state court is allowed. The Court of Criminal Appeals, in conformity with the mandate and injunction contained in Article 53, has consistently held that a direct appeal does not lie from a judgment of the County Court where the fine imposed on trial *de novo* did not exceed $100 and costs in cases originating in the justice or corporation courts. The judgment of the County Court is final and such court is the *highest court* in which a decision can be had. *Hodge* v. *State,* 137 Tex. Cr. R. 195, 128 S. W. 2d 1205; *Phillips* v. *State,* 138 Tex. Cr. R. 9, 133 S. W. 2d 580; *Harlan* v. *State,* 138 Tex. Cr. R. 47, 134 S. W. 2d 289; *Conley* v. *State,* 141 Tex. Cr. R. 478, 149 S. W. 2d 99; *Spann* v. *State,* 161 S. W. 2d 494; and *Ragsdale* v. *State,* 120 Tex. Cr. R. 63, 47 S. W. 2d 278.

Being the highest court in which a decision could be had in this case in the State of Texas, it was not necessary that appellant thereafter begin a new proceeding in some other court to obtain relief from the judgment. In *Gregory* v. *McVeigh,* 23 Wall. 294, 306, a writ of error issued to

the Corporation Court of Alexandria, Virginia. There was a motion to dismiss for want of jurisdiction because, as there alleged by defendant in error, such was not the highest court of the state in which a decision could be had. The writ of habeas corpus was available under Virginia law to the plaintiff in error, but such was not applied for in that case nor did this Court in overruling the motion to dismiss discuss that question. See also *Downham* v. *Alexandria*, 9 Wall. 659, appeal from the District Court, and also *Cohens* v. *Virginia*, 6 Wheat. 264.

In another case originating in Texas, *Grovey* v. *Townsend*, 295 U. S. 45, it was held that this Court had jurisdiction on appeal directly from the justice court. There the plaintiff sued for damages in amount less than $20 for alleged violation of Texas election laws. The statutes of Texas prevented a further appeal to the County Court because the amount sued for did not exceed $20 and costs. It was held that the justice court was the highest court in which a decision could be had in that case in the State of Texas, and for that reason this Court took jurisdiction and decided the case on the merits.

Neither the case of *Tenner* v. *Dullea*, 314 U. S. 585, 692, No. 713 October Term 1941, nor the older case of *Mooney* v. *Holohan*, 294 U. S. 103, 115, gives the theory urged against jurisdiction of this case any comfort or strength in argument. Both of these cases involved "discretionary powers" of this Court. The *Tenner* case was a petition for writ of habeas corpus presented originally to the Superior Court of San Francisco, California. The Constitution, statutes and decisions of California, although denying an appeal from such decision of the Superior Court refusing the application, specifically allow presentation of successive *original* applications for writs to the District Court of Appeals and to the Supreme Court of California where full hearing is allowed on all issues involved. There was no decision or statute which limited the jurisdiction of such courts in habeas corpus as exists

in Texas. The Texas Court of Criminal Appeals denies original habeas corpus jurisdiction in such cases as these. The *Tenner* case was brought to this Court by petition for a *discretionary writ*, the writ of certiorari, and not by appeal. *This case is here on appeal.*

The other ground of distinction is that this is a direct appeal from the judgment of conviction and not an app l from proceedings which are discretionary, as this Court holds *habeas corpus proceedings* to be.

In the *Mooney* case, supra, the effort was made to apply directly to this Court in an original application for a writ of *habeas corpus* to have this *federal court* relieve the petitioner from the force of a state judgment rendered against him under a state penal statute. His application was addressed to the *sound discretion* of this Court on original motion for leave to file such application. It did not involve a direct appeal from the judgment of conviction. In the exercise of its discretion this Court denied the motion for leave to file on the grounds that Mooney had not invoked the corrective judicial remedy of habeas corpus afforded by the state of California, then open to him. An entirely different proposition is involved in the case at bar. What is here presented is an appeal as a matter of right under an Act of Congress where there is drawn in question the validity of *state legislation* under the Constitution of the United States.

In that case the California courts were open to Mooney to make the same full complaint against the judgment as he was making before this Court on his motion for leave to file petition for writ of habeas corpus. Here there is not claimed to be in Texas a remedy as full as that afforded under the Judicial Code allowing an appeal. At best the most appellee claims available to appellant is the 'narrow way' of procedure, allowing only partial review, before the Court of Criminal Appeals, *as to whether or not the ordinance is void on its face and by its terms.* It is conceded that in the courts of Texas there is no

broader way to review by any process or proceedings the other and more extensive question of whether or not the ordinance is applied so as to abridge and deny appellant's constitutional rights of free speech, press and worship guaranteed by the 1st and 14th amendments.

The *Mooney* and *Tenner* cases are decisively distinguished from the case at bar by this Court in the case of *Edwards* v. *California,* 314 U. S. 160, where this Court entertained a direct appeal from the Superior Court of Yuba County, California. No further appeal was allowed to a higher court of California; however, there was available the remedy of the writ of habeas corpus under the law and practice of California. *California Constitution, Article VI, sections* 1, 4, 4b *and* 5. *Matter of Perkins,* 2 Cal. 424; *California Penal Code,* section 1475, and *Matter of Zaney,* 164 Cal. 724, 727.

In the case of *Kim Young,* appellant, v. The People of the State of California (joined with *Schneider* v. *State* at 308 U. S. 147) appeal was allowed from the Superior Court of Los Angeles County. In that state a writ of habeas corpus could have been applied for to the District Court of Appeals or to the Supreme Court of California, as provided by California statutes. This Court did not discuss the jurisdictional question at length, but said: "The Superior Court of Los Angeles County affirmed the judgment. That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed."

Earlier cases in which this Court entertained writs of error, now appeals, are cited in *Kentucky* v. *Powers,* 201 U. S. 1, and other cases cited at page 2, supra. See also *U. S. C. A. Title* 28 *Section* 344, *note* 32.

Moreover, the rule laid down in the *Mooney* and *Tenner* cases is based merely on considerations of "orderly procedure" and proper exercise of this Court's discretion; but, a mere rule of practice should never be permitted to override a constitutional right or the statutory right

of appeal allowed under the Judicial Code. *Agnello* v. *United States*, 269 U. S. 20.

That this is a final judgment subject to review by this court there can be no doubt, as was held in *Betts* v. *Brady*, 316 U. S. 455, 460-461. There this Court said:

> "It is true that the order was not final, and the petitioner has not exhausted state remedies in the sense that in Maryland, as in England, in many of the states, and in the federal courts, a prisoner may apply successively to one judge after another and to one court after another without exhausting his right. We think this circumstance does not deny to the judgment in a given case the quality of finality requisite to this court's jurisdiction. Although the judgment is final in the sense that it is not subject to review by any other court of the State, we may, in our *discretion*, refuse the writ when there is a higher court of the State to which another petition for the relief sought could be addressed, but this is not such a case."

We submit that this Court should hold that its jurisdiction in the case at bar is not impaired by any such rule advanced by appellee.

Under all the circumstances of this case this Honorable Court should assume jurisdiction. In *Cohens* v. *Virginia* (1821) 6 Wheat. 264, 404, Mr. Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exer-

cise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty."

FIVE.

This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.

Now we turn to a consideration of the question of whether or not under the law and practice of Texas the judgment can be *fully reviewed* on this record by a higher state court by habeas corpus or other proceedings.

PRIOR to the holding of the Texas Court of Criminal Appeals in the case of *Ex parte Largent*, 162 S. W. 2d 419, it would have been admitted by us that a further review could be had by way of writ of habeas corpus; but *since* such decision, unjustifiably overruling previous holdings allowing a review, it can now be definitely stated that the remedy of habeas corpus in the District Court and Court of Criminal Appeals does not afford appellant a *full review* of the judgment.

The rule adopted by the Court of Criminal Appeals, which must be followed by the district courts, is that in this type of judgment rendered in the county court the inquiry is limited to the one question, to wit, *Is the ordinance unconstitutional and void on its face and by its terms?* If it is not, or if the ordinance is unconstitutional only as enforced and applied, the court cannot grant the writ, and if granted it must be denied. That court says that in this type of judgment it cannot make inquiry into what

facts are involved or whether the undisputed evidence shows that the ordinance does not apply.

That a judgment remanding a relator to custody in a habeas corpus proceeding is a final and appealable judgment within the meaning of the Judicial Code defining this Court's jurisdiction on appeal is too well established to require citation of authority. The fact that cases can be brought here by way of habeas corpus does not deny this Court's right to review directly by appeal or certiorari a conviction in a state court. This Court can review both, but the right to review one does not deny the right to review the other. See *Herndon* v. *Georgia*, 295 U.S. 441, and *Herndon* v. *Lowry*, 301 U.S. 242. Therefore, the fact that this Court considered the case of *Collins* v. *Texas*, 223 U.S. 288, habeas corpus proceedings involving the validity of a proceeding brought in the county court under the Unlawful Medical Practice Act of Texas; and *Tinsley* v. *Anderson*, 171 U.S. 101, a review by habeas corpus of an imprisonment for contempt of the district court, does not impair the jurisdiction of this court in this case.

Where no constitutional question is involved, or conviction is not void, it has been invariably the rule of Texas Court of Criminal Appeals in habeas corpus proceedings not to review a judgment of conviction rendered on trial de novo (on appeal from the Justice or Corporation courts) in the County Court where the fine imposed did not exceed $100 and costs. So to do is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157.

In Texas the writ of habeas corpus is declared to be the principal bulwark of human liberty in that State. *Ex parte Calhoun*, 91 S. W. 2d 1047.

In cases where the petition for writ of habeas corpus was brought for the purpose of reviewing the evidence to determine whether or not it was sufficient, or whether or

not there was evidence to sustain the conviction, the Court of Criminal Appeals universally held to the rule that if there was no constitutional question or if the judgment was not void, it would not review by habeas corpus said judgment of conviction in instances where the case originated in the justice or corporation courts and the fine imposed on trial de novo did not exceed $100 and costs. To do so is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157, and *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609.

There are many recognized exceptions to the above rule. We now turn to a discussion of the cases recognizing these exceptions for the purpose of showing that the decision of the court in the *Largent* case (162 S. W. 2d 419) is fictitious evasion of a properly raised federal question.

In instances where the Court of Criminal Appeals found the ordinance or statute to be unconstitutional on its face the writ of habeas corpus has been unhesitatingly sustained to release one held under a judgment of conviction in the county court on trial de novo in appeals from the justice and corporation courts. In *Ex parte Patterson*, 42 Tex. Cr. R. 256, 58 S. W. 1011, the ordinance was void on its face because it prohibited a bowling alley within 100 yards of a residence. In *Ex parte Spelce*, 119 S. W. 2d 1037, a Dodd City ordinance prohibiting dance hall within 400 feet of churches was held void on its face. *Ex parte Faulkner*, 158 S. W. 2d 525, holds the "Green River" ordinance of Canyon unconstitutional according to its unreasonable terms. *Ex parte Farnsworth*, 61 Tex. Cr. R. 342, 135 S. W. 535, holds an ordinance of Dallas establishing a commission to fix telephone rates, etc., unconstitutional on its face. In *Ex parte Battis*, 40 Tex. Cr. R. 112, 48 S. W. 513, it was an ordinance prohibiting commercial vehicles for hire from parking on certain downtown streets. *Ex parte Neill*, 32

Tex. Cr. R. 275, 22 S. W. 923, holds void a Seguin ordinance prohibiting sale in the city of a certain newspaper declared a nuisance. In *Ex parte Garza*, 28 Tex. Cr. R. 381, a San Antonio ordinance licensing bawdy houses held void on its face.

Prior to the decision of the Court of Criminal Appeals in *Ex parte Largent*, 162 S. W. 2d 419, it was uniformly held that even though the law be valid on its face, if the statute or ordinance did not apply to the facts in the case the defendant was not guilty and was entitled to a discharge by writ of habeas corpus when convicted on trial de novo in the county court and fined not more than $100. In *Ex parte Roquemore*, 131 S. W. 1101, 60 Tex. Cr. R. 282, the writ was granted to discharge the accused who had been convicted of violating the Sunday Law of Texas. He operated a baseball park and baseball game on Sunday. It was held that the statute when properly construed did not cover the activity of the defendant and on the admitted facts he was not guilty. This case was cited with approval by Judge Hawkins in *Ex parte Jarvis*, 3 S. W. 2d 84. In *Ex parte Jonischkiss*, 227 S. W. 952, 88 Tex. Cr. R. 574, it was held that the writ of habeas corpus was available to release one charged with a violation of a city traffic ordinance where the admitted facts did not constitute a crime under the law of Texas. In *Ex parte Butcher*, 53 S. W. 2d 781, 122 Tex. Cr. R. 39, an application for writ of habeas corpus was granted because the court declared that the operator of a laundry did not come within the provisions of a statute prohibiting labor of females more than 54 hours per week. See also *Ex parte Wall*, 91 S. W. 2d 1065; and *Ex parte Jones*, 81 S. W. 2d 706.

Before the decision in *Ex parte Largent*, supra, it was consistently held by the Court of Criminal Appeals that whether an ordinance is constitutional depends on the facts to which it is applied. During such time that court consistently held that in habeas corpus cases it could not

inquire into and determine whether an ordinance was unconstitutional *as construed and applied* to the undisputed evidence and facts of the case. In *Ex parte Baker*, 127 Tex. Cr. R. 589, 78 S. W. 2d 610, 613, the ordinance fixing fees on non-resident business representatives was held to be arbitrary and violative of the 14th Amendment as applied. The writ of habeas corpus was granted. In that case the court said: "It is a familiar rule that the validity of an act is to be determined not alone by its caption and phraseology, but also by its practical operation and effect." In *Ex parte Lewis*, 45 Tex. Cr. R. 1, 73 S. W. 811, it was held that an ordinance valid on its face was unconstitutional because of the provisions of the city charter which was introduced in evidence. In *Ex parte Mihlfread*, 128 Tex. Cr. R. 556, 83 S. W. 2d 347, it was held that an ordinance providing for the license tax upon certain occupations was void because high, excessive and confiscatory under the circumstances of the case. In *Ex parte Ernest*, 136 S. W. 2d 595, 138 Tex. Cr. R. 441, an ordinance providing for sanitary inspection of bakeries was held valid as applied to institutions within the city but invalid as applied to institutions located outside the city. The court considered the evidence. In *Ex parte Kennedy*, 78 S. W. 2d 627, Judge Hawkins wrote the opinion on rehearing. On the original hearing the ordinance was held to be constitutional on its face and the writ was held properly denied. On rehearing, concerning the relator's attack upon the zoning ordinance the court said: "Relator seems to concede that said case is decisive of the question as to the *general attack* upon the constitutionality of said ordinance, but urges that it should be held unconstitutional, *as it relates to the restriction in the use of the particular property of relator involved in the prosecution.*" The court then inquires into the question as to whether the *valid ordinance* has been applied in an unconstitutional manner, and holds that it is not violative of the Federal Constitution as applied. In *Ex parte Stein*, 135 S. W. 136, 61 Tex. Cr. R.

320, the court inquired into the evidence to determine the constitutionality of an ordinance. See *Ex parte Degener*, 17 S. W. 1111, 1114; *Ex parte Kearby*, 34 S. W. 635; 34 S. W. 962; and *Ex parte Dreibelbis*, 133 Tex. Cr. R. 83, 109 S. W. 2d 476.

In his opinion in the *Largent* case Judge Hawkins does not cite or discuss any of the foregoing cases but contents himself with a consideration of the cases originating in the justice or corporation court where there was no constitutional question involved and where habeas corpus was invoked as a substitute for appeal to review the sufficiency of the evidence. *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609, is said to be controlling. There the defendant was convicted of breaching the peace and contended there was no evidence showing guilt. The case was not within the exception allowing use of the writ in such cases. What was contended in the *Largent* case was that the admitted facts or undisputed evidence showed that relator was not within the terms of the ordinance and if considered within such provisions then such application of the ordinance to the undisputed evidence violated the Federal Constitution.

Concerning the host of cases above enumerated Judge Hawkins in *Ex parte Largent*, supra, says: "If some cases from this court may be found which seem to be in conflict with such holding they are out of harmony with said Art. 53 and the great number of cases construing said article. Either that, or the claimed conflict is more apparent than real." (*Largent* [No. 349 Oct. T. 1942, this Court] R. 27) This shows that the real issue was evaded by that court. The dissenting opinion of Judge Graves in the *Largent* case clearly establishes the fact that the majority holding was fictitious, arbitrary and contrary to the established precedent of Texas.

Unless this Court so holds and reverses the *Largent* case it will be impossible now to say that there is an opportunity for a full review of a judgment of this sort in a higher court of Texas by way of writ of habeas corpus.

Under this type of holding by that court the duty of the state courts to protect citizens from oppressive, discriminatory, burdensome and harsh enforcement of an ordinance so as to abridge the constitutional rights of the citizens *cannot be inquired into on habeas corpus.*

Such a holding therefore makes the United States Supreme Court the only court which can fully review *in one proceeding* ALL questions presented on this appeal.

If we are forced to apply to any of the state courts for further review by a writ of habeas corpus, the court or judge will be confined to considering and determining *whether or not the ordinance on its face violates the federal Constitution;* and then if found valid, an appeal must be taken to the Court of Criminal Appeals. Should that appellate court hold the ordinance valid *on its face* we would have to come to this Court restricted to consideration of the single question, viz., WHETHER THE ORDINANCE ON ITS FACE VIOLATED THE UNITED STATES CONSTITUTION, which is the *only* question the Court of Criminal Appeals says it can consider in habeas corpus proceedings of this kind.

Unless this Court holds that the refusal of the Court of Criminal Appeals, in *Ex parte Largent,* supra, to pass on all constitutional questions presented was a fictitious non-federal disposition to avoid passing on the *real federal question raised,* this Court must, under the rule announced repeatedly, confine its consideration to the federal questions to which the state court restricted its consideration under local procedure in such cases. See *Northw'n Bell Tel. Co.* v. *Nebr. St. Ry. Com'n,* 297 U. S. 471, 473.

Under such practice, if approved in a case of this kind, when the judgment of the Court of Criminal Appeals is disposed of on *void-on-face question* in this Court, in favor of validity of the law, if we desired to have reviewed the question of whether or not the ordinance is *construed and applied* to the facts and undisputed evidence in such a manner as to violate the Federal Constitution it would

be necessary to go back to the trial court and bring up the judgment of such trial court to this Court directly from the trial court.

This Court has approved the practice of taking a second appeal directly to this Court to review the federal questions raised in the record after a first appeal has been taken to state appellate court on the non-federal questions. (*Kentucky* v. *Powers*, 201 U.S. 1, 37) But this rule would not apply here, for in Texas in this type of case no further appeal lies to a higher court to review the judgment on any question. *Kentucky* v. *Powers*, supra, does not warrant a requirement that a new proceeding must be instituted in the state court by habeas corpus as condition to attempting to secure a review of the judgment by appeal under the Judicial Code.

However, if this honorable court, on consideration of the recent opinion of the Court of Criminal Appeals in the *Largent* case, supra, holds that the doctrine of that court in limiting its consideration to the question of *'unconstitutionality on its face and by its terms'* is an unreasonable abridgment of the right of habeas corpus, or is a fictitious non-federal question decided for the purpose of arbitrarily and evasively considering the federal question of whether the ordinance is unconstitutional as construed and applied, the avenue would then be open to secure a full review of the question by habeas corpus. The Court of Criminal Appeals could then be required to consider all proper federal questions correctly raised in the record.

In such event this Court could review all of the questions raised in the trial court and presented on appeal even though evaded and not passed on by the Court of Criminal Appeals.

SUCH would properly provide a defendant a *full review* of the record of conviction *by habeas corpus* in a higher state court in a case of this kind.

This Court has uniformly denied the doctrine and con-

demned the practice of bringing litigation from the state courts in sections, divisions, piecemeal or in parcels. A litigant is allowed only one appeal from the same judgment to the same court, in the same proceeding. See *United States* v. *Girault*, 11 How. 22, 32; *Heike* v. *United States*, 217 U. S. 423, 429.

If the doctrine of the state is correct in its attack upon the jurisdiction of this Court in this case, then a new way has been found which will allow *two* appeals to this court, one from the appellate court and another from the trial court, at different times, involving the same record, the same trial, but different judgments. In one it would be the appellate judgment or judgment in the habeas corpus proceeding, and in the other it would be the judgment of conviction rendered in the criminal proceeding originally instituted. This would compel a multiplicity of actions and appeals and be needless circuity of action. In *Carpenter* v. *Longan*, 16 Wall. 271, 21 L. Ed. 313, this Court held that the parties ought not to be driven from one forum to obtain a remedy which cannot be denied in another forum.

In the circumstance that appellant relied upon the *Largent* case and upon this Court's denial of certiorari in same it would be unjust and a burdensome imposition to drive appellant back to the courts of Texas to seek relief which can be readily granted here, because, at time of appellant's appeal herein, the doors of such courts were closed to a full review of the judgment by habeas corpus.

Appellee makes a frivolous objection to the jurisdiction of the court by contending that the Judicial Code does not allow jurisdiction on appeal where the validity of an ordinance is involved. This theory is definitely rejected in *John P. King Mfg. Co.* v. *City Council of Augusta*, 277 U. S. 100, 102-114, which appellee says should be overruled by this court. That case was followed in *Hamilton* v. *Regents*, 293 U. S. 245, 257-258; *Lovell* v. *Griffin*, 303 U. S. 444, and no sound reason is advanced why the established rule should be changed.

Although this Court notified counsel (63 S. Ct. 324) to discuss in their briefs the question as to whether the judgment is subject to further *full review* in the courts of Texas, it is noticed that appellee fails to enlighten the court on the subject in its brief. Appellant has done her best to find and present all Texas cases on the subject so that the court can reach a proper conclusion in the interest of justice.

CONCLUSION

The court has jurisdiction and the judgment should be reversed.

Respectfully submitted,

TOM S. WILLIAMS
Sulphur Springs, Texas

HAYDEN C. COVINGTON
117 Adams Street
Brooklyn, New York

Attorneys for Appellant

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON,

Appellant,

vs.

THE STATE OF TEXAS.

APPEAL FROM THE CRIMINAL COURT OF DALLAS COUNTY, TEXAS.

MOTION TO DISMISS OR AFFIRM.

H. P. KUCERA,
R. L. DILLARD, JR.,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

APPEAL FROM THE COUNTY CRIMINAL COURT, DALLAS COUNTY, TEXAS.

MOTION TO DISMISS OR AFFIRM APPEAL.

To the Honorable Justices of Supreme Court of the United States:

A. Comes now the State of Texas, appellee herein, by its counsel and moves this Court to dismiss with costs the appeal taken herein to this Court by Mrs. Ella Jamison upon the following grounds:

I.

This Court does not have jurisdiction to hear this appeal under Section 237 (a) of the Judicial Code as amended by

the Act of February 13, 1925, Chapter 229, 43 Stat. at Large, 936 (U. S. C. A. Title 28, Section 344(a)) because the County Criminal Court of Dallas County is not the "highest court" in the state of Texas "in which a decision in the suit could be had." Appellant could have applied to the District Court of Dallas County for a writ of habeas corpus and if said writ had been refused by the District Court, appellant could have appealed to the Court of Criminal Appeals.

II.

This Court does not have jurisdiction of this appeal because a municipal ordinance is not "a statute of any state" within the meaning of Section 237 of the Judicial Code as amended by the act of February 13, 1925, Chapter 229, 43 Stat. at Large, 936 (U. S. C. A. Title 28, Section 344(a)).

B. In the alternative appellant moves this Court to affirm on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

Attached hereto is a brief in support of this motion citing pertinent authorities.

Dated this 20th day of November A. D. 1942.

(Signed) H. P. Kucera,
(Signed) R. L. Dillard, Jr.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 558

MRS. ELLA JAMISON,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

APPEAL FROM THE COUNTY CRIMINAL COURT, DALLAS COUNTY, TEXAS.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM APPEAL.

I.

The appellant claims jurisdiction in this Court under Sec. 237(a) of the Judicial Code as amended (U. S. C. A. Title 28, Sec. 344(a)). This section vests jurisdiction in this Court where there is "a final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had" in which it is contended that the statute of any state is repugnant to the constitution of the United States, and the decision is in favor of the validity of the statute.

Under the first ground of its motion to dismiss appellee contends that the County Criminal Court of Dallas County is not the highest court in Texas in which a decision in the suit could be had because appellant could have applied to the District Court for a writ of habeas corpus and if it had been denied she could have appealed to the Court of Criminal Appeals, the highest appellate court in Texas in criminal cases. *Ex parte Largent*, 162 S. W. (2d) 419 at 420 par. 1. *Ex parte Slawson*, 141 S. W. (2d) 609 at 610 par. 1. Appellant contends that the ordinance is void on its face because it infringes on her constitutional rights. (Appellant's Statement of Points Relied on, Tr. ——; First and Second Assignment of Error, Tr. ——). If appellant's contention is legally sound, she would have been entitled to a writ of habeas corpus from the District Court or upon denial, by the Court of Criminal Appeals upon an appeal.

The Court of Criminal Appeals says in *Ex Parte Slawson*, 141 S. W. (2d) 609 at 610 par. 1—

"It is observed that relator has had his right of appeal from the justice court to the county court, and his case was finally disposed of in the county court, and under Art. 53 C. C. P., we have no jurisdiction of a further appeal in this matter. However, if the statute itself is void and infringes upon his constitutional rights, then relator would have his right of habeas corpus to relieve himself from custody under the capias pro fine issued under the judgment of conviction in the county court at law." The following cases are to the same effect: *Ex parte Largent*, 162 S. W. (2d) 419 at 420 Par. 1 and cases there cited; *Ex Parte Robinson*, 17 S. W. 1057; and *Ex Parte Smith*, 102 S. W. 115. In *Ex Parte Largent*, 162 S. W. (2d) 419 (appeal dismissed by this Court at the present term) the court said:

Appellant attacks the validity of the judgment of conviction by asserting that the ordinance under which she was convicted is unconstitutional. If the ordinance is void on

its face, then this Court has jurisdiction to so determine in this proceeding.

Had the writ of habeas corpus been denied by the Court of Criminal Appeals, appellant could have then appealed to this Court under Section 237(a) of the Judicial Code. In *Tinsley* v. *Anderson*, 171 U. S. 101 at 105, 18 S. Ct. 805, 43 L. ed. 91, at 96, this Court says:

> But the appellate jurisdiction of this Court from the state court extends to a final judgment or decree in any suit, civil or criminal in the highest court of a state where a decision in the suit could be had, against a title, right, privilege, or immunity, specially set up and claimed under the Constitution or a treaty or statute of the United States. Rev. Stat. 709. Consequently, if the order of the court of criminal appeals of the State of Texas, being the highest court of the state having jurisdiction of the case, dismissing the writ of habeas corpus issued by one of its judges, and remanding the prisoner to custody, denied to him any right specially set up and claimed by him under the Constitution, laws, or treaties of the United States, it is doubtless reviewable by this Court on writ of error.

The denial of a writ of habeas corpus challenging the validity of a statute on constitutional grounds is appealable to this Court from a state court. *New York ex rel Bryant* v. *Zimmerman*, 278 U. S. 63 at 70, 49 S. Ct. 61, 73 L. ed. 184 at 188 and cases there cited.

The Court of Criminal Appeals is the highest court in Texas for the determination of criminal cases hence it must affirmatively appear on the face of the record that a decision in this suit could not have been had in that court or this Court is without jurisdiction under Sec. 237(a) (28 U. S. C. A. 344(a)) to hear this case. *Fisher* v. *Carrico*, 122 U. S. 522, 7 S. Ct. 1227, 30 L. ed. 1192. *McKnight* v. *James*, 155 U. S. 685, at 687, 39 L. ed. 310 at 311, 15 S. Ct. 248.

The accepted course of procedure in challenging the validity of a Texas statute is by applying for a writ of habeas corpus in the District or County Court then appealing to the Court of Criminal Appeals and thence by appeal to this Court. *Collins* v. *Texas*, 223 U. S. 288, 56 L. ed. 439, 32 S. Ct. 286.

II.

The second ground of appellee's motion to dismiss this appeal is based on the contention that a municipal ordinance is not a "state statute" within the meaning of Section 237(a) of the Judicial Code (28 U. S. C. A. 344(a)). We believe that this Court should re-examine the decision in *King Manufacturing Company* v. *Augusta*, 277 U. S. 100, 48 S. Ct. 489, 72 L. ed. 801. The burden that has been placed on this Court in recent years by appeals of this type demonstrates the soundness of the dissenting opinion of Mr. Justice Brandeis in *King Mfg. Company* v. *Augusta*, supra. The reasons are so well presented in Justice Brandeis' opinion in that case that it is not necessary for us to repeat them here.

The decision in the *King Mfg. Co.* case is not consistent with the interpretation of other congressional legislation regulating the appellate jurisdiction of this Court. *Ex Parte Collins*, 277 U. S. 565, 48 S. Ct. 585, 72 L. ed. 990; *Frankfurter & Landis*, The Supreme Court Under The Judiciary Act of 1925, 42 Harvard Law Review, 1 at 24-25; *Dodd*, What is a Statute under the Federal Judicial Code? 38 Yale Law Journal 359; and The Three Judge Rule, 38 Yale Law Journal 955.

III.

Appellee contends that this cause should be affirmed because it is manifest that the questions on which the cause depends are so unsubstantial as not to need further argument.

The City of Dallas clearly has the right to forbid the use of its streets by persons as a place to carry on the business of selling, trading or advertising the selling or trading of merchandise. *West* v. *City of Waco*, 115 Texas 472, 294 S. W. 842; *Ex parte Hogg*, 156 S. W. 931; *Decker* v. *City of Wichita*, 109 Kan. 796, 202 Pac. 89; *Hadfield* v. *Lundin* (Wash.) 168 Pac. 516 L. R. A. 1918B; *Packard* v. *Banton*, 264 U. S. 140, 143, 44 S. Ct. 257, 68 L. ed. 596, 607; *Sproles* v. *Binford*, 286 U. S. 390, 76 L. ed. 1167, 52 S. Ct. 581; *Stephenson* v. *Binford*, 287 U. S. 256, 264, 77 L. ed. 288, 294; *City of Dallas* v. *Harris*, 157 S. W. (2d) 710 writ of error refused.

The appellee was attempting to use the streets for the advertisement of certain books which were being offered for sale by the Watch Tower Society (S. F. 2). The constitutional guarantees of freedom of speech and freedom of religion do not protect individuals who attempt to commercialize either of these freedoms. *Schneider* v. *State*, 308 U. S. 147, 165, 84 L. ed. 155, at 166; *Jones* v. *City of Opelika*, 62 S. Ct. 1231 86 L. ed.; *Valentine* v. *Chrestensen*, 62 S. Ct. 920. Appellants have attempted to disguise the commercialization of their religion by printing on one side of the pamphlet an announcement of a speech while on the other side they have printed a description and an advertisement of certain books which they were offering for sale in an effort to raise funds. The distribution of this type of hand bill is not protected by the constitutional guarantees relating to freedom of religion and freedom of speech. *Valentine* v. *Chrestensen*, 62 S. Ct. 920, 86 L. ed. Advance opinions, Page 861, 862. In that case the court said:

"This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not

unduly burden or proscribe its employment in these public thoroughfares. We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising. Whether and to what extent, one may promote or pursue a gainful occupation in the streets, to what extent such activity shall be adjudged a derogation of the public right of user, are matters for legislative judgment. The question is not whether the legislative body may interfere with the harmless pursuit of a lawful business, but whether it must permit such pursuit by what it deems an undesirable invasion of, or interference with, the full and free use of the highways by the people in fulfillment of the public use to which streets are dedicated. If the respondent was attempting to use the streets of New York by distributing commercial advertising, the prohibition of the code provision was lawfully invoked against his conduct."

This Court has many times discussed the question of freedom of speech and freedom of religion but has never taken the occasion to consider the reverse of the situation i. e., the rights of other individuals to be free *from* the speech and religion of persons like this appellant. The public is entitled to be free from harassment and annoyance from attempts by people like the appellant to force their speech and religion upon them.

The commercial advertising on the pamphlets which the appellants were handing out distinguishes this case from the cases cited by appellee and places it squarely within the doctrine announced by this Court in *Valentine* v. *Chrestensen, supra.* The appeal is without substantial grounds and should be affirmed without further argument.

Respectfully submitted,

(Signed) H. P. KUCERA,
(Signed) R. L. DILLARD, JR.

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CLERK

Supreme Court of the United States

OCTOBER TERM 1942

No. 558

MRS. ELLA JAMISON,

Appellant

V.

STATE OF TEXAS,

Appellee

Appealed from the County Criminal Court, Dallas County, Texas.

APPELLEE'S BRIEF

H. P. KUCERA,
A. J. THUSS,
R. L. DILLARD, JR.,
Counsel for Appellee.

NICKS PRINTING CO., DALLAS

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Supreme Court of the United States

OCTOBER TERM 1942

No. 558

MRS. ELLA JAMISON,

Appellant

V.

STATE OF TEXAS,

Appellee

Appealed from the County Criminal Court, Dallas County, Texas

---

APPELLEE'S BRIEF

To the Honorable Justices of the Supreme Court of the United States:

The appellant, a member of the religious sect known as Jehovah's Witnesses, was arrested on the public streets of the City of Dallas and charged with a vio-

lation of Article 140-7 of the 1941 Code of Civil and Criminal Ordinances of the City of Dallas. In the complaint she was charged with distributing advertising matter contrary to the provisions of the above mentioned article. The handbills distributed by the appellant contained on one side the announcement of a speech and on the other side an advertisement of two religious publications which could be purchased by sending 25c to the Watchtower Society, 117 Adams Street, Brooklyn, New York. The appellant defended the prosecution on the ground that the article was unconstitutional and void, because in contravention of the Fourteenth Amendment to the United States Constitution.

Appellee contends that this court has no jurisdiction to review the decision of the County Criminal Court of Dallas County where appellant has not applied to the Court of Criminal Appeals for Writ of Habeas Corpus.

COUNTERPOINTS

One

The court should dismiss this appeal because it has no jurisdiction to hear the same under Section 237(a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, 43 Statutes at Large 936 (U.S.C.A., Title 28, Section 344(a)). The County Criminal Court of Dallas County is not the highest court in the State of Texas in which a decision in the suit could be had. Appellant could have applied to the

District Court of Dallas County for a Writ of Habeas Corpus, and if said writ had been refused by the District Court, appellant could have appealed to the Court of Criminal Appeals.

Two

This court should dismiss this appeal because a municipal ordinance is not "a statute of any state" within the meaning of Section 237(a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, 43 Statutes at Large 936 (U.S.C.A., Title 28, Section 344(a)).

Three

This court should hold that the streets of the City of Dallas are public property to be used primarily for private purposes and that the City owes appellant no duty to furnish her a forum in which to practice her religious rites.

Four

This court should hold that where purported religious pamphlets also contain commercial advertising of books which the distributor is offering for sale, the distribution of such pamphlets on the public streets is not protected by the Fourteenth Amendment to the United States Constitution.

ARGUMENT UNDER COUNTERPOINT ONE

One

The court should dismiss this appeal because it has

no jurisdiction to hear the same under Section 237(a) of the Judicial Code as amended by Act of February, 13, 1925, Chapter 229, 43 Statutes at Large 936 (U.S.C.A., Title 28, Section 344(a)). The County Criminal Court of Dallas County is not the highest court in the State of Texas in which a decision in the suit could be had. Appellant could have applied to the District Court of Dallas County for a Writ of Habeas Corpus, and if said writ had been refused by the District Court, appellant could have appealed to the Court of Criminal Appeals.

Where the validity of the ordinance is challenged in the manner that the appellant does in this case, the ordinance must be judged upon its face. **Thornhill v. Alabama,** 310 U. S. 88, at 97, 98; **Carlson v. State of California,** 310 U. S. 106 at 111. In the Thornhill case there was an appeal by certiorari to this court from a conviction for violation of an anti-picketing statute. The proof was before this court as to the acts committed by the appellant in violation of the statute; yet the court said, "the section in question must be judged upon its face." Mr. Justice Murphy repeated the same statement in the Carlson case, involving similar facts.

The appellant admits that a further review of this case can be had in the Court of Criminal Appeals of Texas by a Writ of Habeas Corpus, where the validity of the ordinance would be judged by a consideration of the ordinance on its face regardless of its application to the facts. **Ex parte Largent,** 162 S. W. 2d 419 at 420, paragraph 1, and cases there cited; **Ex parte**

Robinson, 17 S. W. 1057; and **Ex parte Smith,** 102 S. W. 115. In the **Largent case** the Court of Criminal Appeals said:

> "If the ordinance is void upon its face, then this court has jurisdiction to so determine in this proceeding." (Habeas corpus proceeding).

Appellant contends that there is a distinction to be made between a direct appeal to this court and an appeal by writ of certiorari. This contention may be true, but it has no application to this case. Section 237(a) provides that appeal to this court does not lie until the appellant has obtained a judgment or decree from the highest court of the state in which a decision in the suit can be had. The language of this section does not limit appellant's necessity to seek a judgment of the highest court to direct appeal. The language of the statute does not exclude the requirement of proceeding for a writ of habeas corpus where such remedy is open in the state courts. It always has been the policy of this court to require that the appellant exhaust his remedies in the state courts before appealing to the federal courts; **Sharpe v. Buchanan,** 87 L. Ed. Advance Opinions page 188; see also the same case, 121 F. 2d 448; **Mooney v. Holohan,** 294 U. S. 103 at 115.

It is evident from the cases cited by appellant that the attack made on the ordinance is based on a contention that the ordinance is unconstitutional on its face. Hence, as we have pointed out above, the judgment of the County Criminal Court was subject to review by habeas corpus in the Court of Criminal Ap-

peals. **Ex parte Slawson,** 141 S. W. 2d 609 at 610, paragraph 1.

Appellant makes an attack on the case of **Ex parte Largent,** 162 S. W. 2d 419, but such attack is not justified under the facts of that case. The court obviously was correct in holding that the ordinance attacked by the relator was entirely valid on its face. This ordinance had been held valid by the Court of Criminal Appeals in numerous other cases. All of the cases cited by appellant here as being contrary to the decision in Ex parte Largent are clearly distinguishable from that case. In each of those cases, either the ordinance **or the complaint** under which the defendant was prosecuted revealed facts which showed that the ordinance was invalid as applied. In **Ex parte Largent** the complaint did not reveal that the relator was attempting to exercise a so-called religious rite. This Court denied certiorari, 87 L. Ed. Ad. Ops. 47.

Under appellant's contention this ordinance is invalid on its face regardless of the facts; therefore the judgment of conviction was subject to review by writ of habeas corpus in the Court of Criminal Appeals.

Appellant should have sought relief from the Court of Criminal Appeals before appealing to this court.

We respectfully refer the court's attention to the argument contained in Appellee's Motion to Dismiss this appeal heretofore filed herein.

ARGUMENT UNDER COUNTERPOINT TWO

Two

This court should dismiss this appeal because a

municipal ordinance is not "a statute of any state" within the meaning of Section 237(a) of the Judicial Code as amended by Act of February 13, 1925, Chapter 229, 43 Statutes at Large 936 (U.S.C.A., Title 28, Section 344(a)).

We respectfully refer the court's attention to the argument contained in Appellee's Motion to Dismiss this appeal heretofore filed herein.

ARGUMENT UNDER COUNTERPOINTS THREE AND FOUR

Three

This court should hold that the streets of the City of Dallas are public property to be used primarily for the purpose of travel and that the City owes appellant no duty to furnish her a forum in which to practice her religious rites.

Four

This court should hold that where purported religious pamphlets also contained commercial advertising of books which the distributor is offering for sale, the distribution of such pamphlets on the public streets is not protected by the Fourteenth Amendment to the United States Constitution.

The streets of the City of Dallas belong to the public and are primarily for the use of the public in the ordinary way. **Packard v. Banton**, 264 U. S. 140 at 144; **Stephenson v. Binford**, 287 U. S. 251 at 274. In the latter case the court says:

"First. It is well established law that the highways of the state are public property; that their primary and preferred use is for private purposes; and that their use for purposes of gain is special and extraordinary, which, generally at least, the legislature may prohibit or condition as it sees fit. Packard v. Banton, 264 U. S. 140, 144, 68 L. Ed. 596, 607, 44 S. Ct. 257, and cases cited; Frost & F. Trucking Co. v. Railroad Commission, 271 U. S. 583, 592, 593, 70 L. ed. 1101, 1104, 1105, 47 A. L. R. 457, 46 S. Ct. 605; Hodge Drive-It-Yourself Co. v. Cincinnati, 284 U. S. 335, 337, 76 L. ed. 323, 326, 52 S. Ct. 144; Johnson Transfer & Freight Lines v. Perry (D. C.) 47 F. (2d) 900, 902; Southern Motorways v. Perry (D. C.) 39 F. (2d) 145, 147; People's Transit Co. v. Henshaw (C. C. A. 8th) 20 F. (2d) 87, 89; Weksler v. Collins, 317 Ill. 132, 138, 139, 147 N. E. 797; Maine Motor Coaches v. Public Utilities Commission, 125 Me. 63, 65, 130 Atl. 866."

This is the settled rule in Texas, and all other jurisdictions. **City of Waco v. West (Sup. Ct.)**, 294 S. W. 832; **City of Dallas v. Harris**, 157 S. W. 2d 710; **Ex parte Hogg** (Crim. App.), 156 S. W. 931; **Decker v. City of Wichita**, 109 Kan. 796, 202 Pac. 89; **Ex parte Dickey**, 76 W. Va. 576, 85 S. E. 781, L.R.A. 1915F 840; **Hadfield v. Lundin** (Wash.), 168 Pac. 516.

The power of the City over the streets is not limited to reasonable regulations but may go to the extent of an absolute prohibition. The power of the City is that of proprietor subject only to ordinary uses by the public. As the Supreme Court of Texas says in **City of Waco v. West**, 294 S. W. 832:

"The highways of the state, including streets

of cities, belong to the state, and the state has full control and authority over them. They 'are the property of and for the use of the state, which, through its Legislature, has absolute control over same, which control it may or not, from time to time, delegate to the local authorities.' Robins v. Limestone County, 114 Tex. 345, 268 S. W. 915; Travis County v. Trogdon, 88 Tex. 514."

This power has been delegated to Home Rule Cities. Art. 1175, Sec. 18. R. C. S. Texas, 1925.

And as Mr. Justice Holmes says in **Commonwealth v. Davis**, 39 N. E. 113 (affirmed by this court, 167 U. S. 44):

> "As representative of the public it may and does exercise control over the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house."

The leaflet distributed by appellant had on one side an advertisement soliciting the sale of certain books by the Watchtower Society of New York at 25¢ per copy, of which company she was, according to the evidence, a duly accredited agent. Under the circumstances the appellant was attempting to use the streets for gain and therefore the legislative body by reason of the City's proprietary interest in the streets could forbid such use. This court has recognized in

Jones v. Opelika, 316 U. S. 584, that the activities of this religious sect have assumed a commercial aspect. As Mr. Chief Justice Reed there says:

> "But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid." (Emphasis ours)

In the present case, appellant was not only distributing leaflets advertising the sale of books but admittedly had in her possession the books advertised, which she would sell and deliver on the street to anyone asking for one. Appellant contends that the sale of the books did not result in a profit to her and hence that the transactions did not assume a commercial aspect, but the same contention was overruled in **Jones v. Opelika**, where the court said:

> "It is enough that money is earned by the sale of articles."

In other words, no profit need accrue to the individual in order for the sale to assume a commercial aspect. The scheme here utilized by appellant or rather the publishing company is ingenuous. It could as well be argued that the price charged merely paid for the cost of printing and distribution. This would mean, of course, that the distributor would make no specific fee on the sale, but would receive a flat fee for his services in the distribution of the leaflets.

Appellant argues that any prohibitory ordinance is invalid and quotes from the Jones case, but actually a prohibitory ordinance very similar to the Dallas

ordinance was sustained by this court at its last term, where it was applied to commercial advertising. **Valentine v. Chrestensen,** 316 U. S. 52. The ordinance in that case not only prohibited the distribution of leaflets on **public** property but on **private** property as well, yet the court sustained the ordinance. The court said:

> "This court has unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares. **We are equally clear that the Constitution imposes no such restraint on government as respects purely commercial advertising.** Whether, and to what extent, one may promote or pursue a gainful occupation in the streets, to what extent such activity shall be adjudged a derogation of the public right of user, are matters for legislative judgment. The question is not whether the legislative body may interfere with the harmless pursuit of a lawful business, but whether it must permit such pursuit by what it deems an undesirable invasion of, or interference with, the full and free use of the highways by the people in fulfillment of the public use to which streets are dedicated. If the respondent was attempting to use the streets of New York by distributing commercial advertising, the prohibition of the code provision was lawfully invoked against his conduct." (Emphasis ours).

Appellant contends further that because the leaflet contains an announcement of a speech which was to

be on a religious subject and not commercial, the rule in **Valentine v. Chrestensen** is not here applicable. But the leaflet in the Valentine case was **not** commercial either—on one side—yet the court applied the ordinance to the distribution of the leaflet. The appellant in the case at bar was attempting to cloak the commercial aspects of her leaflet by advertising a speech allegedly on religion. The appellant's acts therefore fall within the interdiction of the Valentine case.

Motives are always difficult to ascertain, but apparently this double-barrel leaflet was to avoid the effect of this court's decision in **Jones v. Opelika**, where members of appellant's religious sect were held subject to a license in connection with their sale of these books. Instead of making an outright offer to sell, appellant advertised the offer, and to sanctify her motives included an announcement of a speech which she quotes at length in her brief to demonstrate its religious character. It is apparent that appellant desired to avoid any licensing requirements of the City.

It is not necessary that the activities of appellant be entirely commercial before she is subject to the ordinance. As the court said in the Jones case:

> "Casual reflection verifies the suggestion that both teachers and preachers need to receive support for themselves as well as alms and benefactions for charity and the spread of knowledge. But when, as in these cases, the practitioners of these noble callings choose to utilize the vending of their religious books and tracts as a source of funds, the financial aspects of their transactions need not be wholly disregarded."

The Jehovah's Witnesses have consistently insisted that they are entitled to use the public streets as a forum to practice their religious rites. This is evident from the many cases which have been before this court. **Cantwell v. Connecticut,** 310 U. S. 302; **Jones v. Opelika,** 316 U. S. 583; **Schneider v. Irvington,** 308 U. S. 147; **Ex parte Largent,** 87 L. Ed. Advance Opinions 47; **Ex parte Killam,** 87 L. Ed. Advance Opinions 47; **Cox v. New Hampshire,** 312 U. S. 569; **Lovell v. Griffin,** 303 U. S. 444. Appellant says the practice of propagandizing her religious beliefs on the streets is a part of her religion.

We readily admit that the Fourteenth Amendment protects the freedom of religion and the freedom of speech, but we do not think that the law places any duty upon the City or the general public to furnish the Jehovah's Witnesses or any other religious sect with a forum in which to express their religious beliefs or practice their religious rites. One of the fundamental principles of the Constitution is that the state and the church are separate. Under the circumstances can we say that the public must furnish any religious sect with a place in which to practice its rites or disseminate its views?

Should the streets be used for conducting a mass, holding a communion, or for a religious dance of the Hopi Indians? Can this court approve one religious ceremony and reject all others, because the form of the ceremony differs?

Can the extent of the use by the religious sect be

the basis of whether or not it is to be allowed? Clearly, since religious ceremonies or rites vary, then to permit one and reject others would lead to a charge of discrimination and a denial of the equal protection of law. If that is the yardstick, then religious rites would become subject to the whims of the local legislature, to be permitted or denied depending upon the composition of the local legislative body, whose action would be supervised by this court and judged in the same light. Chief Justice Hughes said in **Cox v. New Hampshire,** that a person must observe traffic regulations on the street regardless of his religious belief. Justice Roberts said in **Schneider v. Irvington,** that a preacher could not establish his pulpit in a street intersection and hold services, because it would interfere with the movement of traffic. Does this not raise the real question, namely, has the State absolute control over its property or is it subject to the individual whims of a religous sect which desires, contrary to the will of the state, to use the State's property for its special benefit? To hold that it is subject to such whim is to hold that the State does not have legal sovereignty to control its property and that the State owes the duty to a religious sect to furnish it a forum for the practice of its rites.

Whether this or that religious rite will or will not constitute an unreasonable use of the street is a subject wholly unfit for judicial determination. The use to which streets and public property shall be put rests within the jurisdiction of the legislative body having control over such property. To hold that the State

can exercise only such control over public property as will conform with the religious views of a particular sect denies to the State its sovereignty. The State under the Federal Constitution owes to a religious sect the duty of non intereference with worship its own way, unmolested, **at the place or places** that the sect controls or has permission to use. It owes the sect the duty not to pass upon its methods of worship or belief, nor to pass any laws or enforce any legislation which would put it at a disadvantage compared to any other religious group, organization or belief. If the laws of the State do this, the State is not infringing upon any constitutional guarantee of freedom or religion.

Traditionally, the freedom of religion has been exercised in the temple, the synagogue, the church, the cathedral, and the home, and not in the public streets. Neither the Constitution of the United States or the Constitution of Texas requires that the City furnish public property for use as a place of religious worship. Manifestly, if the appellant attempted to propagate her views on another person's private property contrary to that person's wishes, she would be guilty of a criminal trespass. Subject to the ordinary public use, the City's proprietary rights in the streets are no less than those of a private owner. Never have the streets been considered the proper place for the exercise of religious ceremonies. The exercise of any of the constitutional freedoms is subject to limitations as to time, place or methods. As the court said in **Jones v. Opelika**, 316 U. S. 584 at 594:

"One man, with views contrary to the rest of his compatriots, is entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order.

"This means that the proponents of ideas cannot determine entirely for themselves the time and place and manner for the diffusion of knowledge or for their evangelism, any more than the civil authorities may hamper or suppress the public dissemination of facts and principles by the people. The ordinary requirements of civilized life compel this adjustment of interests."

Likewise, in **Cox v. New Hampshire**, 312 U. S. 569 at 574, Chief Justice Hughes says:

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of

the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places."

The same principles are recognized in **Schneider v. Irvington,** 308 U. S. 147, one of the principal authorities upon which appellant relies in this case. Mr. Justice Roberts in that case says:

"For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition of such conduct would not abridge the constitutional liberty since such activity bears no nec-

> essary relationship to the freedom to speak, write, print or distribute information or opinion."

Mr. Justice Sutherland said in **Village of Euclid v. Ambler Realty Company**, 272 U. S. 365:

> "A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard."

So it is with the exercise of a religion on a public street, especially when that religion has been commercialized as in this case. As the court pointed out in the Jones case, the exercise of constitutional freedoms may be limited as to place. The appellant argues that the ordinance is void because it is an absolute prohibition; but actually it is only a limitation as to place, which the court has said is valid. In the final analysis all regulatory measures are prohibitory in some respects. This does not render such regulations invalid a fortiori.

We repeat what we said in our Motion to Dismiss: there is a constitutional right to freedom **from** religion as well as a constitutional right to freedom **of** religion.

Appellant argues that if commercial advertising is excluded from the streets the great newspapers and magazines also will be excluded. We do not deny this, but still insists that no constitutional rights will be violated by such exclusion. The courts have almost uniformly held from early times that the exclusion of newspapers and commercial advertising from the streets violates no constitutional rights. **Common-**

wealth v. Kimball (Mass.) 13 N. E. 2d 18, 114 A. L. R. 1440, in cases collected in the note at 1446; **In re Anderson**, 69 Neb. 686, 96 N. W. 149, opinion by Pound; **City of Milwaukee v. Kassen**, 203 Wis. 383, 234 N. W. 352; **San Francisco Shopping News Company v. City of South San Francisco**, 69 F. 2d 879; **City of Manchester v Leiby**, 117 F. 2d 661; **Commonwealth v. Nichols** (Mass.), 18 N. E. 2d 166. This court made it plain in **Schneider v. Irvington**, 308 U. S. 147, that their holding did not apply to commercial activities. Judge Roberts says:

> "We are not to be taken as holding that commercial soliciting and canvassing may not be subjected to such regulation as the ordinance requires."

The court followed up this language in the case of **Valentine v. Chrestensen** by saying that such commercial advertising could be entirely excluded. This holding is entirely consistent with the overwhelming majority of the decisions in the state courts.

Appellant contends that the decision of the state court in this case conflicts with **Schneider v. Irvington**, 308 U. S. 147; **Hague v. C. I. O.**, 307 U. S. 496; **Thornhill v. Alabama**, 310 U. S. 88; **Carlson v. California**, 310 U. S. 106; and **Near v. Minnesota**, 283 U. S. 697. We think it apparent that these cases, when considered in the light of their facts, are not applicable to the present case. In the **Thornhill** case there was an absolute prohibition against picketing regardless of where it was conducted. In **Hague v. C. I. O.** the ordinance required a prior censorship of material and the facts showed a continued discriminatory course of

action by the municipal authorities. In **Near v. Minnesota** the court was not dealing at all with a handbill ordinance, but with an injunction suit to restrain the publication of a particular newspaper. Neither **Schneider v. Irvington** nor **Carlson v. California** involve the commercialization of constitutional freedoms, as we have in this present case. Admittedly we do not agree with the decision in **Schneider v. Irvington,** because it is obviously contrary to all the prior decisions of numerous state courts on the same question, wherein the courts have held that the city in the exercise of its proprietary rights in the streets could exclude from the street any person who is attempting to burden the streets with an extraordinary use, but we do not think it applicable.

The appellant is willing to criticize the officials of the City of Dallas for intolerance in enforcing this ordinance against her, but she demonstrates the ultimate in intolerance by making a pointed attack upon the Roman Catholic Church, a religious organization which she insists should be suppressed. We refer the court to the appellant's summary of the lecture, as contained in her brief.

Appellant argues that the decision in **Valentine v. Chrestensen** would mean the end of newspapers, but this is obviously untrue, since a newspaper does not depend upon distribution upon the streets for its continued existence. The great bulk of all newspapers are sold and distributed on private property. As we have repeatedly stated, the ordinance in the present

case is strictly confined to prohibition of distribution on public streets.

The fact that so many ctiies have passed ordinances of this character indicates to our mind at least that a large portion of the legislative bodies of this country have thought it in the public interest to prohibit commercial activities in the streets. Under the circumstances, how can this court say that no facts could exist which would support the exercise of legislative discretion?

As Mr. Justice Cardozo said in the case of **Williams v. Annapolis**, 289 U. S. 36 at 42:

> "It is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived. * * * The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the Legislature must have its way."

It may be that liberal political philosophy would insist that such use should be permitted of public property, but certainly the matter is not one which should be addressed to a court, but to the legislative body. The wisdom or desirability of allowing such a use of public property is a matter which lies exclusively with the judgment of the legislative body.

To hold that this appellant is entitled to conduct her form of religious ceremonies on the streets means

that this court must overrule the well-established rule that a municipality has the right to prohibit any extraordinary use of its streets. The court is then faced with the problem of hearing the complaint of every other religious body which desires to make some new and different use of the streets. This court would then be the body controlling the nature and extent of the use instead of the local legislative bodies, and thus the court becomes the licensing authority. The very magnitude of the task which would be imposed demonstrates the wisdom of the ordinance in excluding all religionists from the streets. The ordinance is equal in its operation and non-discriminatory. To say that a Jehovah's Witness can practice her religion on the streets because it only puts a small burden on the public user, and a Catholic cannot say mass on the streets because the burden is larger would certainly deny to the latter its equal protection of the law.

WHEREFORE, appellee respectfully submits that this appeal should be dismissed for want of jurisdiction, or in the alternative that the judgment of the trial court be in all respects affirmed.

Respectfully submitted,

H. P. KUCERA,
A. J. THUSS,
R. L. DILLARD, JR.,
Counsel for Appellee.

A copy of this brief has been furnished to Mr. Hayden C. Covington, 117 Adams Street, Brooklyn, New York, counsel for appellant.

SUPREME COURT OF THE UNITED STATES.

No. 558.—October Term, 1942.

Mrs. Ella Jamison, Appellant, *vs.* The State of Texas. | On Appeal from the Criminal Court of Dallas County, Texas.

[March 8, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The appellant, a member of the Jehovah's Witnesses, was charged with distributing handbills on the streets of Dallas, Texas, in violation of an ordinance of that city which prohibits their distribution. She was convicted in the Corporation Court of Dallas, and appealed to the County Criminal Court where, after a trial de novo, she was again convicted and a fine of $5.00 and costs was imposed. Under Texas law she could appeal to no higher state court,[1] and since she properly raised federal questions of substance in both courts, the case is rightfully here on appeal under Section 237(a) of the Judicial Code. *King Manufacturing Co.* v. *Augusta*, 277 U. S. 100. The appellee has asked us to reconsider the doctrine of the *King Manufacturing Co.* case under which this Court takes jurisdiction on appeal from judgments sustaining the validity of municipal ordinances. We see no reason for reconsidering the *King Manufacturing Co.* case and follow it here.

We think the judgment below must be reversed because the Dallas ordinance denies to the appellant the freedom of press and of religion guaranteed to her by the First and Fourteenth Amendments of the Federal Constitution.

The stipulated facts show that the appellant, after three years of special training, had devoted many years to the work of the Jehovah's Witnesses. At the time of her arrest, the appellant was distributing handbills in an orderly and quiet manner to pedestrians whom she met on the street. On one side of the handbill was an invitation to attend a gathering in a Dallas park which was

[1] The Texas practice under which this is the highest state court to which appellant could appeal is considered in Largent v. Texas, No. 559, decided this day.

to be one of fifty simultaneous gatherings of Jehovah's Witnesses in as many cities to hear an address by a leader of the group on "Peace, Can It Last". The other side of the handbill repeated the invitation and described at the bottom two books which explained the Jehovah's Witnesses' interpretation of the Bible and set out their religious views. This was followed by a statement that the books would be mailed "Postage Prepaid on your contribution of 25¢". While the books were not actually sold on the streets, the appellant would have delivered them to the home of anyone who made the twenty-five cents contribution. The books would have cost her more than twenty-five cents.

The Dallas ordinance which is set forth in the margin[2] has been construed by the state court to forbid the distribution of leaflets by the appellant in the fashion outlined above.[3] The city seeks to uphold the ordinance here on the contention (a) that it is justified as an exercise of the city's plenary control of its streets, and (b) that appellant's activity may be forbidden because the leaflets include "commercial advertising of books which the distributor is offering for sale."

First. The city contends that its power over its streets is not limited to the making of reasonable regulations for the control of traffic and the maintenance of order, but that it has the power absolutely to prohibit the use of the streets for the communication of ideas. It relies primarily on *Commonwealth* v. *Davis*, 167 U. S. 43. This same argument made in reliance upon the same decision has been directly rejected by this Court. *Hague* v. *C. I. O.*, 307 U. S. 496, 514-516. Of course, states may provide for control of

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2 "Scattering handbills, etc.—It shall be unlawful for any person to carry or hold by hand or otherwise, any billboard, show card, placard or advertisement, or to wear any costume for the purpose of attracting attention of the public, or to scatter or throw any handbills, circulars, cards, newspapers or any advertising device of any description, along or upon any street or sidewalk in the city of Dallas. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, may be fined in any sum not exceeding one hundred dollars."

3 The complaint under which the appellant was convicted alleged that she did "carry, hold by hand, distribute, scatter and throw handbills as an advertising medium" in violation of the ordinance. It will be noted that the word "distribute" which does not appear in the ordinance, is a part of the complaint, and that the words "carry or hold by hand" which appear in the first clause of the ordinance as relating to billboards, et cetera, have been applied in the complaint as though relating to "handbills" which appear in the second clause of the ordinance in connection with papers scattered or thrown on the street.

travel on their streets in order to insure the safety and convenience of the traveling public. *Cox* v. *New Hampshire*, 312 U. S. 569, 574. They may punish conduct on the streets which is in violation of a valid law. *Chaplinsky* v. *New Hampshire*, 315 U. S. 568. But one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word. *Hague* v. *C. I. O.*, *supra*; *Schneider* v. *Irvington*, 308 U. S. 147, 162. Here, the ordinance as construed and applied prohibits the dissemination of information by handbills. As such, it cannot be sustained.

Second. The right to distribute handbills concerning religious subjects on the streets may not be prohibited at all times, at all places, and under all circumstances. This has been beyond controversy since the decision in *Lovell* v. *Griffin*, 303 U. S. 444. The city contends, however, that in the instant case the prohibition is permissible because the handbills, although they were distributed for the unquestioned purpose of furthering religious activity, contained an invitation to contribute to the support of that activity by purchasing books related to the work of the group. The mere presence of an advertisement of a religious work on a handbill of the sort distributed here may not subject the distribution of the handbill to prohibition. In *Schneider* v. *Irvington*, *supra*, we held that the city of Irvington might not forbid conduct almost precisely the same as that with which the appellant in the instant case is charged. Even where handbills carrying notice of a public gathering contained a statement of an admission fee, we held that they could not be barred from distribution on the streets. *Schneider* v. *Irvington*, *supra*, 154, 162, 163. No admission was to be charged at the meeting for which the appellant was circulating leaflets in the instant case. In *Cantwell* v. *Connecticut*, 310 U. S. 296, 305, we said that a state might not prevent the collection of funds for a religious purpose by unreasonably obstructing or delaying their collection.

The state can prohibit the use of the street for the distribution of purely commercial leaflets, even though such leaflets may have "a civil appeal, or a moral platitude" appended. *Valentine* v. *Chrestensen*, 316 U. S. 52, 55. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity

merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.

Reversed.

Mr. Justice FRANKFURTER acquiesces in the refusal to reconsider *King Mfg. Co.* v. *Augusta*, 277 U. S. 100, although, for the reasons set forth by Holmes and Brandeis, JJ., dissenting, he deems that case to have been erroneously decided. Otherwise he agrees with the opinion in this case.

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.